

Chapter 26

ENVIRONMENT*

* **Charter References:** Authority of town council to secure and promote the general welfare and to prevent all things detrimental to the health, convenience and welfare of the inhabitants of the town, § 26.

Cross References: Animals, ch. 10; buildings and building regulations, ch. 14; dangerous buildings, walls and other structures, § 14-81 et seq.; community development, ch. 22; hot ashes and other dangerous materials, § 30-8; health and sanitation, ch. 34; planning, ch. 50; solid waste, ch. 54; hazardous waste, § 54-111 et seq.; streets, sidewalks and other public places, ch. 58; trailers and trailer parks, ch. 70; utilities, ch. 74.

State Law References: Erosion and sediment control, Code of Virginia, § 10.1-560 et seq.; local stormwater management programs, Code of Virginia, § 10.1-603.3; local air pollution ordinances, Code of Virginia, § 10.1-1321; abatement or removal of nuisances, Code of Virginia, §§ 15.2-900, 15.2-1115.

Article I. In General

Secs. 26-1--26-25. Reserved.

Article II. Noise

Division 1. Generally

Sec. 26-26. Disturbing noises generally.

Sec. 26-27. Exclusions from article.

Sec. 26-28. Violation of quiet zone.

Sec. 26-29. Hawkers and peddlers.

Sec. 26-30. Noisy animals and birds.

Sec. 26-31. Yelling, shouting, hooting, whistling or singing.

Sec. 26-32. Radios, phonographs, televisions, musical instruments and other sound producing machines.

Sec. 26-33. Receiving sets, loudspeakers, amplifiers and other machines used for advertising.

Secs. 26-34--26-60. Reserved.

Division 2. Sound Trucks

Sec. 26-61. Definitions.

Sec. 26-62. License or permit required.

Sec. 26-63. Application for license or permit.

Sec. 26-64. Issuance or denial of license or permit; conditions governing use.

Sec. 26-65. Conditions of use.

Secs. 26-66--26-90. Reserved.

Article III. Nuisances

Division 1. Generally

Sec. 26-91. Article supplemental.

Sec. 26-92. Nuisances prohibited within town.

Sec. 26-93. Certain nuisances enumerated.

Sec. 26-94. Responsibility of property owners, occupants and others.

Secs. 26-95--26-120. Reserved.

Division 2. Abatement

Sec. 26-121. Inspections, investigations and complaints.

Sec. 26-122. Right to enter private premises; duty of occupants.

Sec. 26-123. Notice to cease and desist activity.

Sec. 26-124. Notice to abate condition constituting nuisance; appeal.

Sec. 26-125. Effect of noncompliance with notice.

Sec. 26-126. Arrest for committing or maintaining nuisance.

Secs. 26-127--26-155. Reserved.

Article IV. Erosion and Sediment Control

Sec. 26-156. Definitions.

Sec. 26-157. Penalties, injunctions and other legal actions.

Sec. 26-158. Authorization.

Sec. 26-159. Purpose.

Sec. 26-160. Local erosion and sediment control program.

Sec. 26-161. Regulated activities.

Sec. 26-162. Action on plans.

Sec. 26-163. Permits, fees, bonding, agreements.

Sec. 26-164. Monitoring; reports; inspections.

Sec. 26-165. Appeals.

ARTICLE I.

IN GENERAL

Secs. 26-1--26-25. Reserved.

ARTICLE II.

NOISE*

* **Cross References:** Noise in operation of motor vehicles, § 66-18.

DIVISION 1.

GENERALLY

Sec. 26-26. Disturbing noises generally.

No person shall create any unreasonably loud and disturbing noise in the town or noise of such character, intensity and duration as to be detrimental to the life or health of any person or to unreasonably disturb the quiet, comfort or repose of any person. The enumeration in this article of certain specific offenses shall not be construed as a limitation of the scope of this article.

(Code 1992, § 13-1)

Sec. 26-27. Exclusions from article.

Nothing in this article shall be construed to prevent the maintenance or use of any signal, warning device or sound amplifying device or the use of human voice to give warning of or instructions concerning any fire, explosion, riot, unlawful assembly, disaster or other public emergency or attack by the public enemy.

(Code 1992, § 13-2)

Sec. 26-28. Violation of quiet zone.

No person shall make or cause to be made any loud and disturbing noise in or near any quiet zone as defined in this section. A quiet zone shall be any part of the town in the vicinity of a hospital, church while services are in progress therein, school during school hours, public library, or place where a person shall be extremely ill or a place where a funeral is being conducted, provided such zone shall have been marked off and designated by appropriate and conspicuous signs placed or caused to be placed by the authority of the town council.

(Code 1992, § 13-3)

Sec. 26-29. Hawkers and peddlers.

No person peddling, hawking or selling produce or goods of any character shall make or cause to be made a noise which disturbs the peace and quiet of a neighborhood.

(Code 1992, § 13-4)

Cross References: Streets, sidewalks and other public places, ch. 58.

Sec. 26-30. Noisy animals and birds.

No person shall have or keep any animal, fowl or bird which, by making or causing frequent or long continued and unreasonable noise, shall disturb the comfort and repose of any person in the vicinity.

(Code 1992, § 13-5)

Cross References: Animals, ch. 10.

Sec. 26-31. Yelling, shouting, hooting, whistling or singing.

No person shall, by yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m. or at any other time or place, disturb the quiet, comfort or repose of persons in any office or in any dwelling, hotel or other type of residence or of any person elsewhere in the vicinity.

(Code 1992, § 13-6)

Sec. 26-32. Radios, phonographs, televisions, musical instruments and other sound producing machines.

The using, operating or permitting to be played, used or operated of any radio receiving set or television set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or playing such machine or device at any time with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto is hereby prohibited. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

(Code 1992, § 13-7)

Sec. 26-33. Receiving sets, loudspeakers, amplifiers and other machines used for advertising.

The using, operating or permitting to be played, used or operated of any radio receiving set, television receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure, where such sound is audible for a distance of more than 50 feet from the building, structure or vehicle in which it is located, is hereby prohibited.

(Code 1992, § 13-8)

Secs. 26-34--26-60. Reserved.

DIVISION 2.

SOUND TRUCKS

Sec. 26-61. Definitions.

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

Sound amplifying equipment means any machine or device for the amplification of the human voice, music or any other sound. The term "sound amplifying equipment" shall not be construed as including a standard automobile radio when used and heard only by occupants of the vehicle in which the radio is installed, warning devices on authorized emergency vehicles, or horns or other warning devices on other vehicles used only for traffic safety purposes.

Sound truck means any vehicle having mounted thereon, or attached thereto, any sound amplifying equipment.

(Code 1992, § 13-26)

Cross References: Definitions generally, § 1-2.

Sec. 26-62. License or permit required.

(a) No person shall operate or cause to be operated within the town any sound truck, with sound amplifying equipment in operation, for any purpose directly or indirectly connected with any business, commercial or other enterprise or activity conducted for gain or profit, without a currently valid town license issued by the town clerk upon payment of a license tax of \$25.00 per year.

(b) No individual and no civic, religious, educational, patriotic, philanthropic or other nonprofit organization shall operate or cause to be operated within the town any sound truck, with sound amplifying equipment in operation, for any nonprofit purpose without a currently valid town permit issued by the town clerk. No permit issuance fee shall be required.

(c) Candidates for public office and political organizations supporting or opposed to candidates for public office or questions or issues to be voted upon at any election shall be deemed to be engaged in a business or commercial enterprise for the purpose of this division and shall be required to obtain a town license and pay the license tax as provided in subsection (a) of this section.

(Code 1992, § 13-27)

Sec. 26-63. Application for license or permit.

Each application for a license or permit required under this division shall be filed with the town clerk in duplicate, in writing, and shall state the following information:

- (1) Name and home address of the applicant.
- (2) Address of the place of business or office of the applicant.
- (3) License number and motor number of the sound truck to be used by the applicant.

- (4) Name and address of the person who owns the sound truck.
- (5) Name and address of the person having direct charge of the sound truck.
- (6) Names and addresses of all persons who will use or operate the sound truck.
- (7) The purpose for which the sound truck will be used.
- (8) A general statement as to the sections of the town in which the sound truck will be used.

(9) The proposed hours of operation of the sound truck.

(10) The number of days of proposed operation of the sound truck.

(11) A general description of the sound amplifying equipment which is to be used.

(12) The maximum sound producing power of the sound amplifying equipment to be used in or on the sound truck. The following shall be stated:

a. The wattage to be used;

b. The volume in decibels of the sound which will be produced; and

c. The approximate maximum distance for which sound will be thrown from the sound truck.

(Code 1992, § 13-28)

Sec. 26-64. Issuance or denial of license or permit; conditions governing use.

(a) The town clerk shall submit each application for a license or permit required under this division to the town council without delay.

(b) If the town council approves an application, it may impose such requirements, prohibitions or restrictions as it may deem appropriate in the best interests of the public, subject to this division, and the town clerk shall issue a license or permit accordingly, upon payment of the license tax or the permit issuance fee.

(c) If the town council denies a license or permit, it shall return the application to the town clerk, who shall thereupon notify the applicant as to the reasons for refusal to grant the license or permit.

(Code 1992, § 13-29)

Sec. 26-65. Conditions of use.

Any sound truck for which a license or permit has been granted for the operation of its sound amplifying equipment shall be subject to the following:

(1) *Permitted sounds.* The only sounds permitted shall be music or human voice.

(2) *Minimum speed of vehicle.* Sound amplifying equipment shall not be operated unless the sound truck upon which such equipment is mounted is operated at a speed of at least ten miles per hour, except when such truck is stopped or impeded by traffic. Where stopped by traffic, the sound amplifying equipment shall not be operated for longer than one minute at each such stop.

(3) *Operation near hospitals, schools, churches, etc.* Sound shall not be issued within 300 feet of hospitals, schools, churches and public buildings.

(4) *Indecent, profane, lewd or slanderous sounds.* The human speech and music amplified shall not be profane, lewd, indecent or slanderous.

(5) *Sound control.* The volume of sound shall be controlled so that it will not be audible for a distance in excess of 100 feet from the sound truck and so that such volume is not unreasonably loud, raucous, jarring, disturbing or a nuisance to persons within the area of audibility.

(6) *Maximum wattage.* No sound amplifying equipment shall be operated with an excess of 15 watts of power in the last stage of amplification.

(7) *Other regulations.* The town council may require such other regulations as a condition to the issuance of such license or permit.

(8) *Days and hours of operation.* Operations under a license shall be permitted for only five hours each day, except on Sundays and legal holidays when no operations shall be authorized. The permitted five hours of operation each day shall be between the hours of 10:00 a.m. and 9:00 p.m., provided that a license granted to a candidate for public office or to a political organization may be operated on an election day during the hours in which the polls are open. Operations under a permit shall be for such days and hours as specified by the town council and included in the permit.

(Code 1992, § 13-30)

Secs. 26-66--26-90. Reserved.

ARTICLE III.

NUISANCES*

* **Charter References:** Authority of town to compel the abatement and removal of all nuisances within the town at the expense of the persons causing the nuisances, § 26.

State Law References: Nuisance birds, Code of Virginia, § 3.1-1011 et seq.; general powers of town council, Code of Virginia, § 15.2-1100 et seq.; local abatement of nuisances, Code of Virginia, § 15.2-1115; powers to secure and promote health, safety, welfare, comfort, convenience, etc., Code of Virginia, § 15.2-1109 et seq.; local health ordinances to be at least as stringent as state laws and regulations, Code of Virginia, § 32.1-34.

DIVISION 1.

GENERALLY

Sec. 26-91. Article supplemental.

Various nuisances are defined and prohibited in this Code, and it is the intent of the town council in enacting this article to make it supplemental to those other sections of this Code in which nuisances are defined and prohibited. The sections of this article relating to the abatement of nuisances shall be regarded as alternative methods and procedures for the abatement of nuisances when other methods and procedures for abatement are provided.

(Code 1992, § 14-1)

Sec. 26-92. Nuisances prohibited within town.

It shall be unlawful for any person to cause, harbor, commit or maintain or to suffer to be caused, harbored, committed or maintained any nuisance as defined by the statute or common law of this state or as defined by this Code or other town ordinance at any place within the town.

(Code 1992, § 14-2)

Sec. 26-93. Certain nuisances enumerated.

(a) The following acts when committed or conditions when existing within the town are hereby defined and declared to be nuisances:

(1) An act done or committed or aided or assisted to be done or committed by any person or any substance, being or thing kept, maintained, placed or found in or upon any public or private place, which is injurious or dangerous to the public health or safety.

(2) All buildings, bridges or other structures of whatever character kept or maintained or which are permitted by any person owning or having control thereof to be kept or maintained in a condition unsafe, dangerous, unhealthy, injurious or annoying to the public.

(3) All trees and other appendages of or to realty kept or maintained or which are permitted by any person owning or having control thereof to be kept or maintained in a condition unsafe, dangerous, unhealthy, injurious or annoying to the public.

(4) All ponds or pools of stagnant water and all foul or dirty water or liquid when discharged through any drain, pipe or spout or thrown into or upon any street, public place or lot to the injury or annoyance of the public.

(5) All obstructions caused or permitted on any street or sidewalk to the danger or annoyance of the public and all stones, rubbish, dirt, filth, slops, vegetable matter or other article

thrown or placed by any person on or in any street, sidewalk or other public place, which in any way may cause any injury or annoyance to the public.

(6) All stables; cattleyards; hog, sheep or cow pens or yards; or structures for poultry permitted by the owner thereof or the person responsible therefor to be harboring or breeding places for rodents or otherwise to be in such a condition as to become offensive, annoying or injurious to the public or to persons in the neighborhood thereof.

(7) All houses or buildings used for special storage of powder, dynamite or other explosive substances, except those maintained pursuant to a permit issued by competent authority.

(8) All septic tanks, privies, cesspools and privy vaults, except septic tanks under sections 74-142 through 74-144.

(b) The nuisances described in this section shall not be construed as exclusive, and any act of commission or omission and any condition which constitutes a nuisance by statute or common law of the state, when committed, omitted or existing within the town limits, is hereby declared to constitute a nuisance.

(Code 1992, § 14-3)

State Law References: Sewage disposal, Code of Virginia, § 32.1-163 et seq.

Sec. 26-94. Responsibility of property owners, occupants and others.

Each owner, lessee, tenant, occupant or person in charge of any real property within the town and each agent or representative of any such person is hereby charged with responsibility for the maintenance and use of such real property in such manner that no use of or activity or condition upon or within such real property shall constitute a nuisance. All such persons are hereby charged with the duty of observing all of the sections of this article, but such responsibility shall not be construed to permit any other person not charged with such responsibility to commit or maintain any nuisance upon or within any real property in the town.

(Code 1992, § 14-4)

Secs. 26-95--26-120. Reserved.

DIVISION 2.

ABATEMENT*

* **Charter References:** Authority of town to abate nuisances at expense of persons causing such nuisances, § 26.

State Law References: Local abatement of nuisances, Code of Virginia, § 15.2-1115.

Sec. 26-121. Inspections, investigations and complaints.

It shall be the duty of the chief of the fire department, the building official and the chief of police to cause inspections to be made from time to time of all portions of the town to determine whether any condition exists or activity is being practiced which constitutes a nuisance. They shall cause an investigation to be made upon complaint made by any responsible person.

(Code 1992, § 14-21)

State Law References: Investigations by town council, Code of Virginia, § 15.2-1409.

Sec. 26-122. Right to enter private premises; duty of occupants.

Town officers shall have the right to enter upon private premises for the purposes specified in section 26-121, upon compliance with all applicable provisions of law. Unless it appears probable that advance warning would defeat the purpose of such entry, occupants of premises to be entered shall be given reasonable notice in advance, and it shall be unlawful for any owner or occupant to prevent such entry which is sought to be made in compliance with law.

(Code 1992, § 14-22)

State Law References: Inspection warrants, Code of Virginia, § 19.2-393 et seq.

Sec. 26-123. Notice to cease and desist activity.

If at any time a town officer shall find that an activity or practice which constitutes a nuisance is occurring within the town, he shall promptly and by the most expeditious means notify the violator to cease and desist forthwith.

(Code 1992, § 14-23)

Sec. 26-124. Notice to abate condition constituting nuisance; appeal.

If at any time a town officer shall find that a condition which constitutes a nuisance exists within the town, he shall give notice in writing to the owner, occupant or person in charge of the premises upon which such condition exists, stating therein the condition which constitutes a nuisance, and directing such addressee to remedy the condition within the time stated in the notice, which shall be not more than ten days. It shall be unlawful for any such owner, occupant or person in charge to fail to comply with the terms of such notice, provided that any owner, occupant or person in charge may, within two days from the service thereof, appeal to the town council, in which case the terms of such notice shall be stayed pending action of the town council, which shall be final. It is provided further that if the officer giving notice shall state in such notice that the condition which constitutes a nuisance is such as to be an imminent hazard to the health, safety or welfare of the public or any person within or near the premises upon which such nuisance exists, the addressee shall comply with the terms of the notice.

(Code 1992, § 14-24)

Sec. 26-125. Effect of noncompliance with notice.

(a) Upon the failure of any person to whom notice has been given, pursuant to section 26-124, to comply with the terms of such notice or with the terms imposed by the town council on appeal, as the case may be:

(1) The town may cause a complaint to be made to the circuit court of the county, setting forth the existence of a public or common nuisance. A special grand jury will investigate such complaint. As provided in Code of Virginia, § 48-1 et seq., the person responsible for such nuisance may be fined up to \$10,000.00 and may be ordered by the court to remove and abate the nuisance forthwith.

(2) The town, in addition to the penalty imposed for the violation of this Code, may maintain an action to enjoin the continuing violation thereof by proceedings for an injunction brought as authorized in Code of Virginia, § 15.2-1432.

(3) The council may maintain an action to compel the responsible party to abate, raze or remove the public nuisance, as authorized in Code of Virginia, § 15.2-900, or any other provision of law.

(4) The town may require abatement of the nuisance under the power of a warrant.

(5) The officer giving notice under this division may forthwith direct the appropriate town officer to remedy or remove the condition which is the subject of such notice, and the expense incurred by the town in so doing shall be charged to the addressee of such notice, to be collected as town taxes or in any other manner authorized by law.

It is provided, however, that nothing in this section shall obligate the town to use town funds or other town resources to abate such a nuisance.

(b) Abatement by the town of any condition which constitutes a nuisance and reimbursement to the town of expenses incurred thereby shall not bar prosecution for maintenance of a nuisance.

(Code 1992, § 14-25)

Charter References: Power of town council to compel the abatement and removal of all nuisances within the town at the expense of the person causing the nuisance or the owner or

occupant of the ground or premises wherein the nuisance may be found, and to require all lands and lots and other premises within the town to be kept clean and sanitary and free from stagnant water, weeds, filth and unsightly deposits, and generally to define, prohibit, abate and suppress and prevent all things detrimental to the health, morals, safety, convenience and welfare of its inhabitants, § 26.

State Law References: Town may provide for removal of trash, garbage, etc., weeds and other foreign growth, Code of Virginia, § 15.2-901; prevention of disease caused by garbage and refuse, Code of Virginia, § 15.2-927; compelling the abatement or removal of nuisances, Code of Virginia, § 15.2-1115; regulation of disposal of garbage and refuse, Code of Virginia, § 15.2-927 et seq.

Sec. 26-126. Arrest for committing or maintaining nuisance.

Nothing in this division shall be construed to prohibit any police officer from arresting any person for committing or maintaining a nuisance when such arrest is made pursuant to law.

(Code 1992, § 14-26)

Secs. 26-127--26-155. Reserved.

ARTICLE IV.

EROSION AND SEDIMENT CONTROL*

* **Cross References:** Design standards and specifications for erosion and sediment controls in subdivisions, § 50-355.

State Law References: Erosion and sediment control, Code of Virginia, § 10.1-560 et seq.

Sec. 26-156. Definitions.

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

Board and *Virginia Soil and Water Conservation Board* mean the state agency continued in Code of Virginia, § 10.1-502.

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

Conservation plan, erosion and sediment control plan and *plan* mean a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit of land will be so treated to achieve the conservation objectives.

Conservation standard and *standards* mean the criteria, guidelines, techniques, and methods for the control of erosion and sedimentation.

Excavating means any digging, scooping or other methods of removing earth materials.

Filling means any deposition or stockpiling of earth materials.

Grading means any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

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

(1) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

(2) Individual service connections;

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

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

(5) Surface or deep mining;

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

(7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;

however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Code of Virginia, § 10.1-1100 et seq., or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163(B);

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

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

(10) Disturbed land areas of less than 10,000 square feet in size; 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 fenceposts and signposts or telephone and electric poles and other kinds of posts or poles;

(12) Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the state marine resources commission or the United States Army Corps of Engineers; 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, the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan approving authority.

Land disturbing permit means a permit issued by the town authorizing the applicant to undertake a land disturbing activity in accordance with this article.

Local erosion and sediment control program and *local control program* mean 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.

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.

Program administrator means the town agent responsible for the proper administration and enforcement of the erosion and sediment control program.

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.

State erosion and sediment control program and *state program* mean the program administered by the board pursuant to this article, including regulations designed to minimize erosion and sedimentation.

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

Virginia Erosion and Sediment Control Handbook means a document which was developed by the state soil and water conservation board, pursuant to Code of Virginia, § 10.1-561, containing minimum standards and specifications for erosion and sediment control practices and criteria and guidelines for the establishment of local erosion and sediment control programs.

(Code 1992, § 6-1)

Cross References: Definitions generally, § 1-2.

State Law References: Definitions, Code of Virginia, §§ 10.1-500, 10.1-560.

Sec. 26-157. Penalties, injunctions and other legal actions.

(a) A violation of this article shall be punished as provided in section 1-9.

(b) The town may apply to the circuit court to enjoin a violation or a threatened violation of this article, without the necessity of showing that there does not exist an adequate remedy at law.

(c) The attorney for the commonwealth shall, upon request of the town, take legal action to enforce this article.

(d) Compliance with this article shall be prima facie evidence in a 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.

(Code 1992, § 6-2)

State Law References: Similar provisions, Code of Virginia, § 10.1-569.

Sec. 26-158. Authorization.

This article is mandated by Code of Virginia, § 10.1-560 et seq., known as the Erosion and Sediment Control Law. Such law provides for a comprehensive statewide program, with standards and guidelines to control erosion and sedimentation, which is implemented on the local level.

(Code 1992, § 6-3)

Sec. 26-159. Purpose.

The purpose of this article is to conserve the land, water, air and other natural resources of the town and to promote the health, welfare and convenience of town residents, by establishing requirements for the control of erosion and sedimentation and by establishing procedures by which these requirements can be administered and enforced.

(Code 1992, § 6-4)

Sec. 26-160. Local erosion and sediment control program.

(a) Administrative procedures for plan submission and review, on-site inspection and ordinance enforcement shall be prepared by the program administrator to outline and explain the operation of the local erosion and sediment control program. These procedures shall be part of the local control program and shall be followed by persons who propose to undertake land disturbing activities.

(b) To carry out the local control program, minimum conservation standards shall be established. These standards shall be equal to those contained in part III of the Virginia Erosion and Sediment Control Handbook, which by reference is adopted as an integral part of the local control program.

(c) The Guidelines for Erosion and Sediment Control Planning and the Guidelines for Erosion and Sediment Control Plans, which are contained in part II of the Virginia Erosion and Sediment Control Handbook, are adopted as an integral part of the local control program and shall be used with the conservation standards by applicants making submittals under this article, in preparing an erosion and sediment control plan.

(Code 1992, § 6-5)

State Law References: Local erosion and sediment control programs, Code of Virginia, § 10.1-562.

Sec. 26-161. Regulated activities.

(a) Except as provided in subsections (b), (c) and (d) of this section, no person shall engage in any land disturbing activity until he has submitted to the program administrator an erosion and sediment control plan and until that plan has been approved and a land disturbing permit has been issued for such activity.

(b) Any person who owns, occupies or operates private agricultural, horticultural or forest lands shall be exempt from the sections of this article for land disturbing activities which result from the tilling, planting or harvesting of agricultural, horticultural or forest crops.

(c) Any state agency that undertakes a project involving a land disturbing activity shall be exempt from this article. All land disturbing projects which are undertaken by state agencies shall be reviewed and approved by the state soil and water conservation board.

(d) Any person whose land disturbing activities involve lands which extend into the jurisdiction of another local erosion and sediment control program shall not be required to submit proposed erosion and sediment control plans to the program administrator, provided such person has a plan which has been approved by the state soil and water conservation board.

(e) Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work, pursuant to a construction contract, the preparation, submission and approval of the required erosion and sediment control plan shall be the responsibility of the

owner of the land.

(Code 1992, § 6-6)

State Law References: Similar provisions, Code of Virginia, § 10.1-563; state agency projects, Code of Virginia, § 10.1-564.

Sec. 26-162. Action on plans.

(a) 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 this article. In addition, as a prerequisite to approval of the plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, as provided by Code of Virginia, § 10.1-561, who will be in charge of and responsible for carrying out the land disturbing activity. 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 in this subsection, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(b) An approved plan may be changed by the authority that approved the plan

when:

(1) Inspection has revealed that the plan is inadequate to satisfy applicable regulations; or

(2) 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.

(Code 1992, § 6-7)

State Law References: Similar provisions, Code of Virginia, § 10.1-563.

Sec. 26-163. Permits, fees, bonding, agreements.

(a) No person shall engage in any land disturbing activity until he has acquired a land disturbing permit from the town, unless the proposed land disturbing activity is specifically

exempted from this article.

(b) A plan review fee of \$25.00 shall be paid to the town before a land disturbing permit is issued.

(c) Before receiving a land disturbing permit, a landowner, on whose property a proposed land disturbing activity is to take place, must sign an agreement certifying his intentions to carry out the provisions of the approved plan and granting right of entry to authorized town officials for the purpose of site inspection.

(d) The town shall not issue building, grading or other permits for construction projects which require land disturbing activities to an applicant until he submits a land disturbing permit and a copy of the executed agreement described in subsection (c) of this section.

(e) Prior to issuance of any permit, the town 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 town to ensure that measures could be taken by the town 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 town and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25 percent of the estimated cost of the conservation action. If the town takes such conservation action upon such failure by the permittee, the town 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 60 days of the achievement of adequate stabilization of the land disturbing activity in any project or section thereof, 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 sections of this article relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

(Code 1992, § 6-8)

State Law References: Similar provisions, Code of Virginia, § 10.1-565.

Sec. 26-164. Monitoring; reports; inspections.

The program administrator shall periodically inspect projects during construction to ensure compliance with the approved plan and to determine whether the measures being used are effective in controlling erosion and sedimentation from the site. The permit holder or his duly designated representative shall be afforded the opportunity to accompany the inspector.

(Code 1992, § 6-9)

State Law References: Similar provisions, Code of Virginia, § 10.1-566.

Sec. 26-165. Appeals.

Final decisions of the town under this article shall be subject to review by the circuit court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging or proposing to engage in land disturbing activities.

(Code 1992, § 6-10)

State Law References: Similar provisions, Code of Virginia, § 10.1-568.