



**Amherst County Board of Supervisors
County Ordinance No. 2023-3**

AN ORDINANCE, NO. 2023-3

Amending and Reenacting of Chapter 11, Planning and Development, of Article IV –
Erosion and Sediment Control, Section 11-60, Penalties, Injunctions, and Other Legal
Actions Code of the County of Amherst, Virginia.

Approved as to form and legality by the Amherst County Attorney

FIRST READING: Board of Supervisors, March 7, 2023
PUBLIC HEARING: Board of Supervisors, March 21, 2023

**AN ORDINANCE TO AMEND AND REENACT CHAPTER 11, PLANNING AND
DEVELOPMENT, ARTICLE IV, EROSION AND SEDIMENT CONTROL,
SECTION 11-60, PENALTIES, INJUNCTIONS, AND OTHER LEGAL
ACTIONS**

WHEREAS, in order to clarify who is responsible for civil enforcement actions under the Amherst Erosion and Sediment Control Ordinance, the Amherst County Board of Supervisors now deems it appropriate to amend and reenact Chapter 11, Planning and Development, Article IV, Erosion and Sediment Control, Section 11-60, Penalties, Injunctions, and other Legal Actions as follows:

ARTICLE IV. EROSION AND SEDIMENT CONTROL

Sec. 11-60. Penalties, injunctions, and other legal actions.

- (a) A civil penalty shall apply to any person who has violateds or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or the Virginia Erosion and Sediment Control Program, VESCP authority:
- (1) Any condition of a land disturbance permit; or
 - (2) Any provision of this article, any provision of erosion and sediment control law, or any stop work order issued pursuant to this article.

The civil penalty for any one (1) violation shall be not less than one hundred dollars (\$100.00) per day nor more than one thousand dollars (\$1,000.00) per day.

- (b) Each day during which the violation is found to have existed shall constitute a separate offense.
- (c) In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of ten thousand dollars (\$10,000.00).
- (d) The director may issue a summons for collection of the civil penalty. The director also may bring a civil action for such violations or failure, and take all other enforcement actions authorized by the erosion and sediment control law.
- (e) In addition to any other available remedies, the director may apply to the circuit court to enjoin a violation or threatened violation of this article without the necessity of showing that an adequate remedy at law does not exist.
- (f) In addition to any civil 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.
- (g) Without limiting the remedies which may be obtained in this section, any person violating, failing, neglecting, or refusing to obey any injunction or other remedy obtained pursuant to this article shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$2,000.00) for each violation. The county may bring a civil action for such violation or failure in the general district or circuit court of the county, as appropriate.
- (h) Any person who has violated or failed, neglected or refused to obey any condition of a permit or any provision of this article or any provision of erosion and sediment control law may enter into a consent order with the director providing for the payment of civil charges for violation in specific sums, not to exceed two thousand dollars (\$2,000.00). Such civil charges shall be in lieu of any civil penalty which could be imposed.
- (i) ~~The commonwealth's~~ county attorney shall, at the county's request, take legal action to enforce the provisions of this article.
- (j) 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.

§ 2. That this ordinance shall be in force and effect upon adoption.

Adopted this 21st day of March 2023.



Tom Martin, Chair
Amherst County Board of Supervisors

Member

Vote

Tom Martin, Chair	<u>AYE</u>
L. J. "Jimmy" Ayers, III,	<u>AYE</u>
Claudia D. Tucker	<u>AYE</u>
Drew Wade	<u>AYE</u>
David W. Pugh, Jr	<u>AYE</u>

ATTEST:



Jeremy S. Bryant, Clerk
Amherst County Board of Supervisors