



# COMMONWEALTH of VIRGINIA

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The Honorable James E. Edmunds, II  
Member, House of Delegates  
455 Short Street, Suite 204  
South Boston, Virginia 24592

Dear Delegate Edmunds:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issues Presented

You inquire regarding the application of stop work orders issued pursuant to *Virginia Code* § 10.1-566(C), which deals, generally, with the ability to suspend construction activities when a building site does not meet certain permit or plan approval requirements. Specifically, you ask whether such orders apply to all construction activities on a particular work site or to only those activities involving earth disturbance; and you also ask whether, given certain assumptions, the building official has the authority to allow some construction to continue during the stop work period.

## Response

It is my opinion that § 10.1-566(C) provides for two distinct orders that may be issued to compel compliance with permit and plan approval requirements: 1) an initial order that applies only to land disturbing activities and 2) a more restrictive second order encompassing all construction activities that may be issued for noncompliance with the first order. It is further my opinion that the building official lacks the authority to limit the scope of the second order once it is issued.

## Background

For purposes of this opinion, I will assume that the conditions precedent to employing the enforcement mechanisms of § 10.1-566(C) are present. Specifically, this opinion assumes that the building official is the proper designee of the chief administrative officer for issuance of such an order and that one of the following situations exists: 1) a sworn complaint of a permit violation has been received and proper notice of the complaint has been given to the landowner, 2) noncompliance presents

imminent danger of harmful erosion or sediment deposition in the waters of the state's watersheds, or 3) land disturbing activities have begun without an approved plan or the required permits.<sup>1</sup>

### Applicable Law and Discussion

In order to prevent "the unreasonable degradation of properties, stream channels, waters and other natural resources,"<sup>2</sup> the General Assembly enacted the Erosion and Sediment Control Law.<sup>3</sup> The law requires persons who intend to "engage in any land-disturbing activity" to submit a plan to the applicable authority, who must then review and approve or disapprove the plan.<sup>4</sup>

The Code also allows the authority enforcing the erosion and sediment control law to take action in the event of violations.<sup>5</sup> The applicable statute can be applied based on its plain and unambiguous meaning.<sup>6</sup> Section 10.1-566 provides two levels of orders to force compliance with the law. First, to force an owner to rectify violations, the appropriate official may

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 . . . , [the official may issue an order] requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.<sup>[7]</sup>

As the language makes clear, this order applies only to "land disturbing activities" and it permits all or part of such activities to be stopped. Once served upon the proper party, the order remains in effect for seven days.<sup>8</sup>

Once the seven-day period has passed, the authority tasked with enforcing the law is given the discretion to issue a second, more stringent order:

"[i]f the alleged violator has not obtained an approved plan or any required permits . . . the chief administrative officer or his designee may issue an order to the owner requiring that *all construction and other work* on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained."<sup>[9]</sup>

With respect to the first stop work orders, the Code contemplated flexibility to ensure compliance. Under the plain language of the statute, a second order is different in its nature and scope.

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<sup>1</sup> See VA. CODE ANN. § 10.1-566(C) (2006).

<sup>2</sup> VA. CODE ANN. § 10.1-561 (2006).

<sup>3</sup> VA. CODE ANN. § 10.1-560 through 10.1-571 (2006 and Supp. 2010).

<sup>4</sup> VA. CODE ANN. § 10.1-563 (2006).

<sup>5</sup> See § 10.1-566.

<sup>6</sup> In our interpretation of this statute, we must "ascertain and give effect to the intention of the legislature [and] that intention must be gathered from the words used." *Watkins v. Hall*, 161 Va. 924, 930, 172 S.E. 445, 447 (1934). When the language of a statute is clear and unambiguous, the statute's plain meaning must be accepted. *Virginia Dep't of Labor & Indus. v. Westmoreland Coal Co.*, 233 Va. 97, 99, 353 S.E.2d 758, 760-61 (1987). *Roberts v. Roberts*, 260 Va. 660, 536 S.E.2d 714 (2000).

<sup>7</sup> Section 10.1-566(C) (emphasis added).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* (emphasis added).

Although the issuance of this secondary order is discretionary, the General Assembly has granted the building official no authority to limit the scope these second orders.

I also note that although § 10.1-566(A) provides specialized treatment for a "single family residence" by allowing a plan-approving authority to waive the certificate of compliance requirement, the stop work order provision found in § 10.1-566(C) makes no distinction between single family residences and other construction projects that occur without an approved plan or the required permits.

#### Conclusion

Accordingly, it is my opinion that, whereas initial orders issued to redress violations of erosion and sediment control schemes may be limited to suspending only land-disturbing construction activities, subsequent orders, designed to enforce the initial order and to compel obtainment of necessary plan approval or permits, must stop all construction activities on the site, other than corrective measures, until such approval or permits are obtained.

With warmest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is written in a cursive style with a large, stylized "C" and a double underline under the "II".

Kenneth T. Cuccinelli, II  
Attorney General