

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA**

O-6-02

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 8th day of April 2002:

Present:	Vote:
Julian T. Lipscomb	Aye
Rebecca M. Ringley	Aye
James H. Burrell	Aye
Dean E. Raynes	Aye
W. R. "Ray" Davis	Aye

Motion was made by Ms. Ringley, which carried 5:0, to adopt the following ordinance:

**AN ORDINANCE TO AMEND CHAPTER 94, WATERWAYS, CODE
OF NEW KENT COUNTY TO PROVIDE PENALTIES
FOR VIOLATIONS OF THAT CHAPTER**

WHEREAS, the recodified version of the Code of New Kent County was adopted by the New Kent County Board of Supervisors on 14 January 2002; and

WHEREAS, in reorganizing the Code, the Chesapeake Bay Preservation Areas provisions were moved to a new Chapter 94; and

WHEREAS, the penalties for violations of the Chesapeake Bay Preservation Areas provisions had been incorporated with general zoning violations; and

WHEREAS, as a result of the recodification, the specific penalties for violations of the Chesapeake Bay Preservation Areas provisions were not carried forward to the new Chapter 94 leaving only the general remedies available for any violation of the County Code; and

WHEREAS, the Board believes that reestablishing penalties for violations of the Chesapeake Bay Preservation Areas provisions is important to ensure good planning practice and equal protection under law; and

WHEREAS, this amendment has been properly advertised in accordance with law and established procedure,

NOW THEREFORE BE IT ORDAINED this, the 8th day of April 2002, by the New Kent County Board of Supervisors that Chapter 94, Waterways, Code of New Kent County be, and it is hereby, amended to add a new Section 94-47 to read and provide as follows:

Article II
CHESAPEAKE BAY PRESERVATION AREAS

* * *

Sec. 94-47. Penalties

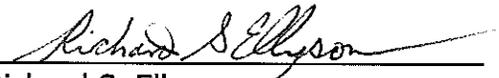
(a) Any person who: (i) violates any provision of this Article or (ii) violates or fails, neglects, or refuses to obey any final notice, order, rule, regulation, or variance or permit condition issued by the County and authorized under this Article shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the County for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that if the violator is the County or its agent, the court shall direct the penalty to be paid into the state treasury.

(b) Nothing in this section shall be deemed to limit the authority of the County to apply to the County Circuit Court for injunctive relief to enjoin a violation or threatened violation of this article, or to seek damages in a civil action, including but not limited to the recovery of any cost(s) incurred for any conservation action undertaken by the County to preserve the Chesapeake Bay Preservation Area in accordance with this Article.

(c) With the consent of any person who: (i) violates any provision of this Article related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any notice, order, rule, regulation, or variance or

permit condition issued by the County and authorized under this Article, the County may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the County in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is found to be the County or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision (a) of this subsection. Civil charges may be in addition to the cost of any restoration required or ordered by the County or the Director of Planning.

BE IT FURTHER ORDAINED, that the provisions of this amendment shall be immediately effective upon adoption.


Richard S. Ellyson
Interim County Administrator


W. R. "Ray" Davis, Jr.
Chairman