

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 392
SENATE BILL 244

AN ACT TO ESTABLISH A PROGRAM FOR THE CONTROL OF POLLUTION FROM
SEDIMENTATION.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as and may be cited as the "Sedimentation Pollution Control Act of 1973."

Sec. 2. Preamble. The sedimentation of streams, lakes and other waters of this State constitutes a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters, principally from construction sites and road maintenance. The continued development of this State will result in an intensification of pollution through sedimentation unless timely and appropriate action is taken. Control of erosion and sedimentation is deemed vital to the public interest and necessary to the public health and welfare, and expenditures of funds for erosion and sedimentation control programs shall be deemed for a public purpose. It is the purpose of this act to provide for the creation, administration, and enforcement of a program and for the adoption of minimal mandatory standards which will permit development of this State to continue with the least detrimental effects from pollution by sedimentation.

Sec. 3. Definitions. As used in this act, unless the context otherwise requires:

(a) "Angle of repose for saturated soil conditions" means the angle of maximum slope at which a heap of any loose soil, thoroughly soaked with moisture, will stand without sliding.

(b) "Commission" means the North Carolina Sedimentation Control Commission.

(c) "Department" means the North Carolina Department of Natural and Economic Resources.

(d) "District" means any Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

(e) "Erosion" means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

(f) "Land disturbing activity" means any use of the land by man in residential, industrial, or commercial development, and highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. This act shall not apply to the following land disturbing activities:

1. Those undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to: forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all such animals; bees and apiary products; fur animals; and
2. Those undertaken on forest land for the production and harvesting of timber and timber products.

3. Activities undertaken by persons as defined in Section 3(h) who are otherwise regulated by the provisions of G.S. 74-46 through G.S. 74-68, The Mining Act of 1971.

(g) "Local government" means any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of this act.

(h) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

(i) "Secretary" means the Secretary of the Department of Natural and Economic Resources.

(j) "Sediment" means solid particulate matter, both mineral and organic, that has been moved from its site of origin and is in suspension in water.

(k) "Working days" means days exclusive of Saturday and Sunday during which weather conditions permit land disturbing activity to be undertaken.

Sec. 4. Sedimentation Control Commission. (a) There is hereby created in the Department of Natural and Economic Resources the North Carolina Sedimentation Control Commission, which is charged with the duty of developing and administering the sedimentation control program provided for in this act. The Commission shall consist of the following members:

1. the Secretary of the Department of Natural and Economic Resources, who shall be chairman, and who may designate some other officer in the Department to act in his stead;
2. a person to be nominated by the Board of the North Carolina Home Builders Association;
3. a person to be nominated by the Carolinas Branch Associated General Contractors of America;
4. the president, vice-president, or general counsel of a North Carolina public utility company;
5. the Director of the North Carolina Water Resources Research Institute;
6. a member of the State Mining Council who shall be a representative of nongovernmental conservation interests, as required by G.S. 74-38(b);
7. a member of the State Soil and Water Conservation Committee;
8. a member of the State Board of Water and Air Resources;
9. a soil scientist from the faculty of North Carolina State University;
10. two persons who shall be representatives of nongovernmental conservation interests.

(b) Appointment. The Commission members shall be appointed by the Governor and all initial appointments shall be made on or before August 1, 1973. All Commission members, except the person filling position number five, as specified in Section 4(a), above, shall serve staggered terms of office of four years. The person filling position number five shall serve as a member of the Commission, subject to removal by the Governor as hereinafter specified in this Section, so long as he continues as Director of the Water Resources Research Institute. The initial terms of office for members filling positions two, three, and four, as specified in Section 4(a), above, shall expire June 30, 1975; thereafter the terms of office for members filling those positions shall be four years. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time, remove any member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, or, in the case of members filling positions one, five, six, seven, eight, and nine, as specified in Section 4(a), above, because they no longer possess the required qualifications for membership. In each

instance appointments to fill vacancies in the membership of the Commission shall be a person or persons with similar experience and qualifications in the same field required of the member being replaced. The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Section 9 of the North Carolina Constitution.

(c) Compensation. The members of the Commission shall receive the usual and customary per diem allowed for the other members of boards and commissions of the State and as fixed in the Biennial Appropriation Act, and, in addition, the members of the Commission shall receive subsistence and travel expenses according to the prevailing State practice and as allowed and fixed by statute for such purposes, which said travel expenses shall also be allowed while going to or from any place of meeting or when on official business for the Commission. The per diem payments made to each member of the Commission shall include necessary time spent in traveling to and from their places of residence within the State to any place of meeting or while traveling on official business for the Commission.

(d) Meetings of Commission. The Commission shall meet at the call of the chairman and shall hold special meetings at the call of a majority of the members.

Sec. 5. Powers and duties of the Commission. (a) The Commission shall, in cooperation with the Secretary of the Department of Transportation and Highway Safety and other appropriate State and federal agencies, develop, promulgate, publicize, and administer a comprehensive State erosion and sedimentation control program.

(b) To implement this program the Commission shall develop and adopt on or before July 1, 1974, rules and regulations for the control of erosion and sedimentation resulting from land disturbing activities, which rules and regulations may be revised from time to time as may be necessary. Prior to the adoption or revision by the Commission of any rules or regulations authorized by this Section 5, it shall conduct one or more public hearings with respect to such proposed action in accordance with the following procedures:

1. Notice of any hearing shall be given not less than 60 days before the date of the hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action that the Commission proposes to take. The notice shall either include details of the proposed action, or where the proposed action is too lengthy for publication, as hereinafter provided for, the notice shall specify that copies of the detailed proposed action can be obtained upon request from the Commission.
2. Any such notice shall be published at least once a week for three consecutive weeks in a newspaper of general circulation in the eastern, western and central regions of the State.
3. Any person desiring to be heard at any public hearing shall give notice thereof in writing to the Commission on or before the date set for the hearing. The Commission is authorized to set reasonable time limits for the oral presentation of views by any one person at any public hearing. The Commission shall permit anyone who so desires to file a written argument or other statement with it in relation to any proposed action at any time within 30 days following the conclusion of any public hearing or within any additional time as it may allow by notice given as prescribed in this section.

When the Commission has completed hearings and considered the submitted evidence and arguments with respect to any proposed action pursuant to this Section 5, it shall adopt its final action with respect thereto and shall publish such final action as part of the official regulations of the Department.

(c) The rules and regulations adopted pursuant to subdivision 5(b) for carrying out the erosion and sedimentation control program shall:

1. be based upon relevant physical and developmental information concerning the watershed and drainage basins of the State, including, but not limited to, data relating to land use, soils, hydrology, geology, grading, ground cover, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;
2. include such survey of lands and waters as may be deemed appropriate by the Commission or required by any applicable laws to identify those areas, including multi-jurisdictional and watershed areas, with critical erosion and sedimentation problems; and
3. contain conservation standards for various types of soils and land uses, which standards shall include criteria and alternative techniques and methods for the control of erosion and sediment resulting from land disturbing activities.

(d) In implementing the erosion and sedimentation control program, the Commission is authorized and directed to:

1. Assist and encourage local governments in developing erosion and sediment control programs and as part of such assistance to develop a model local erosion control ordinance, and approve, approve as modified, or disapprove local plans submitted to it pursuant to Section 11 of this act;
2. Assist and encourage other State agencies in developing erosion and sedimentation control programs to be administered in their jurisdictions, and to approve, approve as modified, or disapprove such programs submitted pursuant to Section 7 of this act and from time to time review such programs for compliance with regulations issued by the Commission and for adequate enforcement; and to require at its discretion, submission of erosion control plans by those responsible for initiating land disturbing activities for approval prior to commencement of said activities;
3. Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques appropriate for use by persons engaged in land disturbing activities, general educational materials on erosion and sedimentation control, and instructional materials for persons involved in the enforcement of erosion control regulations, ordinances, and plans.

(e) To assist it in developing the erosion and sedimentation control program required by this act, the Commission is authorized to appoint an advisory committee consisting of technical experts in the fields of water resources, soil science, engineering, and landscape architecture.

(f) All rules and regulations of the Commission promulgated pursuant to this act shall be incorporated either in the Secretary's official regulations or his rules of procedure. All such rules and regulations shall upon adoption be printed and a duly certified copy thereof shall be filed with the Secretary of State and with the several clerks of court of the counties of the State as required by Sections 143-195 through 143-198.1 of the North Carolina General Statutes. Copies shall at all times be kept at the office of the Secretary in sufficient numbers to satisfy all reasonable requests therefor. The Secretary shall codify the regulations and rules promulgated under this act and shall from time to time revise and bring up to date such codifications.

Sec. 6. Authority of the Secretary. The sedimentation control program developed by the Commission shall be administered by the Secretary under the direction of the Commission. To this end the Secretary is authorized and directed to employ, with the approval of the Commission, the necessary clerical, technical, and administrative personnel, and to assign tasks to the various divisions of the Department for the purpose of implementing this act. The Secretary, as chairman of the Commission, is authorized to bring enforcement actions pursuant to Sections 15 and 16 of this act.

Sec. 7. Jurisdiction of the Commission. (a) The Commission shall have jurisdiction, to the exclusion of local governments, for the purpose of promulgating regulations concerning land disturbing activities that are:

1. conducted by the State;
2. conducted by the United States;
3. conducted by persons having the power of eminent domain;
4. conducted by local governments;
5. licensed by the United States; or
6. financed in whole or in part by the State or the United States.

(b) The Commission may delegate the jurisdiction conferred by this subdivision 7(a), in whole or in part, to any other State agency that has submitted an erosion control program to be administered by it, if such program has been approved by the Commission as being in conformity with the general State program.

(c) The Commission shall have concurrent jurisdiction with local governments over all other land disturbing activities.

Sec. 8. Mandatory standards for Land Disturbing Activity. No land disturbing activity subject to this act shall be undertaken except in accordance with the following mandatory requirements:

(a) No land disturbing activity shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearer the land disturbing activity, provided, that this subsection (a) shall not apply to a land disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(b) No slope may be graded to an angle greater than the angle of repose for saturated soil conditions applicable for the type of soil involved; unless the soil on such slope is retained by some adequate erosion controlling structure or device. In any event, soil left exposed will, within 30 working days of completion of any phase of grading, be planted or otherwise provided with a ground-cover sufficient to restrain erosion.

(c) Whenever land disturbing activity is undertaken on a tract comprising more than one acre, if more than one contiguous acre is uncovered, a ground-cover sufficient to restrain erosion must be planted or otherwise provided within 30 working days on that portion of the tract upon which further active construction is not being undertaken, provided, that this subsection (c) shall not apply to cleared land forming the basin of a reservoir later to be inundated.

Sec. 9. Enforcement authority of the Commission, (a) In implementing the provisions of this act the Commission is authorized and directed to:

(a) Inspect or cause to be inspected the sites of land disturbing activities to determine whether applicable laws, regulations or erosion control plans are being complied with;

(b) Make requests, or delegate to the Secretary authority to make requests, of the Attorney General or solicitors for prosecutions of violations of this act.

Sec. 10. Educational activities. The Commission in conjunction with the Soil and Water Conservation Districts, the North Carolina Agricultural Extension Service, and other appropriate State and federal agencies shall conduct educational programs in erosion and sedimentation control, such programs to be directed towards State and local governmental officials, persons engaged in land disturbing activities, and interested citizen groups.

Sec. 11. Local erosion control programs. (a) Any local government may submit to the Commission for its approval an erosion and sediment control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances, rules and regulations necessary to establish and enforce such control programs, and they are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs.

Two or more units of local government are authorized to establish a joint program and to enter into such agreements as are necessary for the proper administration and enforcement of such program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

(b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of the model local erosion control ordinance developed in accordance with Section 5(d)1.

(c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sediment control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

Sec. 12. Approval of plans. (a) Each local government's erosion and sediment control program shall require that for those land disturbing activities requiring prior approval of an erosion control plan, such plan shall be submitted to the appropriate Soil and Water Conservation District at the same time it is submitted to the local government for approval. The Soil and Water Conservation District or Districts, within 20 days after receipt of the proposed plan, or within such additional time as may be prescribed by the local government, shall review the plan and submit its comments and recommendations to the local government. Failure of the Soil and Water Conservation District to submit its comments and recommendations within 20 days or within the prescribed additional time shall not delay final action on the proposed plan by the local government.

(b) Local governments shall review each erosion control plan submitted to them and within 30 days of receipt thereof shall notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. A local government shall only approve a plan upon determining that it complies with all applicable State and local regulations for erosion and sediment control.

(c) The disapproval or modification of any proposed erosion control plan by a local government shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of the disapproval or modification. The hearings shall be conducted pursuant to procedures adopted by the local government. Judicial review of the final action of the local government on the proposed plan may be had in the superior court of the county in which the local government is situated.

(d) With respect to approved plans for erosion control in connection with land disturbing activities, the approving authority, either the Commission or a local government, shall provide for periodic inspections of the land disturbing activity to insure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from the land disturbing activities. Notice of such right of inspection shall be included in the certificate of approval for the plan. If the approving authority determines that the person engaged in the land disturbing activities has failed to comply with the plan, the authority shall immediately serve upon that person by registered mail a notice to comply. The notice shall set forth the measures needed to come into compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land disturbing activities fails to comply within the time specified, he shall be deemed in violation of this act.

Sec. 13. Cooperation with the United States. The Commission is authorized to cooperate and enter into agreements with any agency of the United States Government in connection with plans for erosion control with respect to land disturbing activities on lands that are under the jurisdiction of such agency.

Sec. 14. Financial and other assistance. The Commission and local governments are authorized to receive from federal, State, and other public and private sources financial, technical, and other assistance for use in accomplishing the purposes of this act.

Sec. 15. Penalties. (a) Civil penalties.

1. Any person who violates any of the provisions of this act or any ordinance, rule, regulation, or order adopted or issued pursuant to this act by the Commission or by a local government, or who initiates or continues a land disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty of not more than one hundred dollars (\$100.00). No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Each day of a continuing violation shall constitute a separate violation under this subdivision 15(a)(1).
2. The Secretary, for violations under the Commission's jurisdiction, or the governing body of any local government having jurisdiction, shall determine the amount of the civil penalty to be assessed under this subdivision 15(a) and shall make written demand for payment upon the person responsible for the violation, and shall set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within 60 days after demand for payment is made, the Secretary shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the penalty, and local governments shall refer such matters to their respective attorneys for the institution of a civil action in the name of the local government in the appropriate division of the General Court of Justice of the county in which the violation is alleged to have occurred for recovery of the penalty. Any sums recovered shall be used to carry out the purposes and requirements of this act.

(b) Criminal penalties. Any person who knowingly or willfully violates any provision of this act or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully initiates or continues a land disturbing activity for which an erosion control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed five thousand dollars (\$5,000), or by both, in the discretion of the court.

Sec. 16. Injunctive relief. (a) Violation of State program. Whenever the Secretary has reasonable cause to believe that any person is violating or is threatening to violate the requirements of this act he may, either before or after the institution of any other action or proceeding authorized by this act, institute a civil action for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur, and shall be in the name of the State upon the relation of the Secretary.

(b) Violation of local program. Whenever the governing body of a local government having jurisdiction has reasonable cause to believe that any person is violating or is threatening to violate any ordinance, rule, regulation, or order adopted or issued by the local government pursuant to this act, or any term, condition or provision of an erosion control plan over which it

has jurisdiction, may, either before or after the institution of any other action or proceeding authorized by this act, institute a civil action in the name of the local government for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.

(c) Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under subdivisions (a) or (b) of this Section 16 shall not relieve any party to such proceeding from any civil or criminal penalty prescribed for violations of this act.

Sec. 17. Civil relief. (a) Any person injured by a violation of this act or any ordinance, rule, regulation, or order duly adopted by the Secretary or a local government, or by the initiation or continuation of a land disturbing activity for which an erosion control plan is required other than in accordance with the terms, conditions, and provisions of an approved plan, may bring a civil action against the person alleged to be in violation (including the State and any local government). The action may seek:

1. injunctive relief;
2. an order enforcing the law, rule, regulation, ordinance, order or erosion control plan violated; or
3. damages caused by the violation; or
4. both damages and injunctive relief; or
5. both damages and an enforcement order.

If the amount of actual damages as found by the court or jury in suits brought under this subdivision 17(a) is five hundred dollars (\$500.00) or less, the plaintiff shall be awarded double the amount of actual damages; if the amount of actual damages as found by the court or jury is greater than five hundred dollars (\$500.00), the plaintiff shall receive damages in the amount so found.

(b) Civil actions under this Section 17 shall be brought in the superior court of the county in which the alleged violations occurred.

(c) The court, in issuing any final order in any action brought pursuant to this Section 17 may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever it determines that such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security, the amount of such bond or security to be determined by the court.

(d) Nothing in this Section 17 shall restrict any right which any person (or class of persons) may have under any statute or common law to seek injunctive or other relief.

Sec. 18. If any provision of this act or the application thereof to any person or circumstance is declared invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 19. All laws, including local enabling laws, in conflict with this act are repealed.

Sec. 20. This act shall become effective July 1, 1973.

In the General Assembly read three times and ratified, this the 9th day of May, 1973.