

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 644*
Committee Substitute Favorable 4/22/93

Short Title: Improve Sedimentation Control.

(Public)

Sponsors:

Referred to:

March 29, 1993

A BILL TO BE ENTITLED
AN ACT TO AMEND THE SEDIMENTATION POLLUTION CONTROL ACT OF
1973 TO MAKE IT MORE EFFECTIVE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-52 reads as rewritten:

"§ 113A-52. Definitions.

As used in this Article, unless the context otherwise requires:

(1) Repealed by Session Laws 1973, c. 1417, s. 1.

(1a) 'Affiliate' means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified person.

(2) 'Commission' means the North Carolina Sedimentation Control Commission.

(3) 'Department' means the North Carolina Department of Environment, Health, and Natural Resources.

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

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

(6) 'Land-disturbing activity' means any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may

1 cause or contribute to sedimentation. This Article shall not apply to
2 the following land-disturbing activities:

- 3 a. Those undertaken on agricultural land for the production of
4 plants and animals useful to man, including but not limited to:
5 forages and sod crops, grains and feed crops, tobacco, cotton,
6 and peanuts; dairy animals and dairy products; poultry and
7 poultry products; livestock, including beef cattle, sheep, swine,
8 horses, ponies, mules or goats, including the breeding and
9 grazing of any or all such animals; bees and apiary products; fur
10 animals;
- 11 b. Those undertaken on forestland for the production and
12 harvesting of timber and timber products and which are
13 conducted in accordance with Forest Practice Guidelines
14 Related to Water Quality (best management practices) as
15 adopted by the Department; and
- 16 c. Activities undertaken by persons as defined in G.S. 113A-52(8)
17 who are otherwise regulated by the provisions of G.S. 74-46
18 through G.S. 74-68, the Mining Act of 1971.

19 (7) 'Local government' means any county, incorporated village, town, or
20 city, or any combination of counties, incorporated villages, towns, and
21 cities, acting through a joint program pursuant to the provisions of this
22 Article.

23 (7a) 'Parent' means an affiliate controlling a specified person directly, or
24 indirectly through one or more intermediaries.

25 (8) 'Person' means any individual, partnership, firm, association, joint
26 venture, public or private corporation, trust, estate, commission, board,
27 public or private institution, utility, cooperative, interstate body, or
28 other legal entity.

29 (9) 'Secretary' means the Secretary of Environment, Health, and Natural
30 Resources.

31 (10) 'Sediment' means solid particulate matter, both mineral and organic,
32 that has been or is being transported by water, air, gravity, or ice from
33 its site of origin.

34 (10a) 'Subsidiary' means an affiliate controlled by a specified person
35 directly, or indirectly through one or more intermediaries.

36 ~~(10a)~~(10b) 'Tract' means all contiguous land and bodies of water being
37 disturbed or to be disturbed as a unit, regardless of ownership.

38 (11) 'Working days' means days exclusive of Saturday and Sunday during
39 which weather conditions or soil conditions permit land-disturbing
40 activity to be undertaken."

41 Sec. 2. G.S. 113A-54(d) reads as rewritten:

42 "(d) In implementing the erosion and sedimentation control program, the
43 Commission shall:

- 1 (1) Assist and encourage local governments in developing erosion and
 2 sediment control programs and as part of such assistance to develop a
 3 model local erosion control ~~ordinance, and ordinance.~~ The Commission
 4 shall approve, approve as modified, or disapprove local ~~plans~~ programs
 5 submitted to it pursuant to G.S. 113A-60;
- 6 (2) Assist and encourage other State agencies in developing erosion and
 7 sedimentation control programs to be administered in their
 8 jurisdictions, and to approve, approve as modified, or disapprove such
 9 programs submitted pursuant to G.S. 113A-56 and from time to time
 10 review such programs for compliance with regulations issued by the
 11 Commission and for adequate enforcement;
- 12 (3) Develop recommended methods of control of sedimentation and
 13 prepare and make available for distribution publications and other
 14 materials dealing with sedimentation control techniques appropriate
 15 for use by persons engaged in land-disturbing activities, general
 16 educational materials on erosion and sedimentation control, and
 17 instructional materials for persons involved in the enforcement of
 18 erosion control regulations, ordinances, and plans;
- 19 (4) Require submission of erosion control plans by those responsible for
 20 initiating land-disturbing activities for approval prior to
 21 commencement of the activities."

22 Sec. 3. G.S. 113A-54.1 reads as rewritten:

23 **"§ 113A-54.1. Approval of erosion control plans.**

24 (a) A draft erosion control plan must contain the applicant's address and, if the
 25 applicant is not a resident of North Carolina, designate a North Carolina agent for the
 26 purpose of receiving notice from the Commission or the Secretary of compliance or
 27 noncompliance with the plan, this Article, or any rules adopted pursuant to this Article.
 28 The Commission ~~must~~ shall either ~~approve or~~ approve, approve with modifications, or
 29 disapprove a draft erosion control plan for those land-disturbing activities for which
 30 prior plan approval is required within 30 days of receipt. Failure to ~~approve~~ approve,
 31 approve with modifications, or disapprove a completed draft erosion control plan within
 32 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves
 33 a draft erosion control plan, it must state in writing the specific reasons that the plan was
 34 disapproved. Failure to ~~approve~~ approve, approve with modifications, or disapprove a
 35 revised erosion control plan within 15 days of receipt shall be deemed approval of the
 36 plan. The Commission may establish an expiration date for erosion control plans
 37 approved under this Article.

38 (b) If, following commencement of a land-disturbing activity pursuant to an
 39 approved erosion control plan, the Commission determines that the plan is inadequate to
 40 meet the requirements of this Article, the Commission may require such revisions of the
 41 plan as are necessary to comply with this Article. Failure to ~~approve~~ approve,
 42 with modifications, or disapprove a revised erosion control plan within 15 days of
 43 receipt shall be deemed approval of the plan.

1 (c) The Director of the Division of Land Resources may disapprove an erosion
2 control plan upon finding that an applicant, or any ~~parent or subsidiary~~ parent, subsidiary,
3 or other affiliate of the applicant corporation if the applicant is a corporation:

- 4 (1) Is conducting or has conducted land-disturbing activity without an
5 approved plan, or has received notice of violation of a plan previously
6 approved by the Commission or a local government pursuant to this
7 Article and has not complied with the notice within the time specified
8 in the notice;
- 9 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a
10 local ordinance adopted pursuant to this Article which is due and for
11 which no appeal is pending;
- 12 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or
13 any criminal provision of a local ordinance adopted pursuant to this
14 Article; or
- 15 (4) Has failed to substantially comply with State rules or local ordinances
16 and regulations adopted pursuant to this Article.

17 (d) In the event that an erosion control plan is disapproved by the Director
18 pursuant to subsection (c) of this section, the Director shall state in writing the specific
19 reasons that the plan was disapproved. The applicant may appeal the Director's
20 disapproval of the plan to the Commission. For purposes of this subsection and
21 subsection (c) of this section, an applicant's record may be considered for only the two
22 years prior to the application date."

23 Sec. 4. G.S. 113A-54.2(b) reads as rewritten:

24 "(b) The Sedimentation Account is established as a nonreverting account within
25 the Department. Fees collected under this section shall be credited to the Account and
26 shall be applied to the costs of administering this Article."

27 Sec. 5. G.S. 113A-55 reads as rewritten:

28 "**§ 113A-55. Authority of the Secretary.**

29 The sedimentation control program developed by the Commission shall be
30 administered by the Secretary under the direction of the Commission. To this end the
31 Secretary ~~is authorized and directed to employ, with the approval of the Commission, shall~~
32 employ the necessary clerical, technical, and administrative personnel, and ~~to~~ assign
33 tasks to the various divisions of the Department for the purpose of implementing this
34 Article. The Secretary ~~is authorized to~~ may bring enforcement actions pursuant to G.S.
35 113A-64 and 113A-65. The Secretary shall make final agency decisions in contested
36 cases that arise from civil penalty assessments pursuant to G.S. 113A-64."

37 Sec. 6. G.S. 113A-60 reads as rewritten:

38 "(a) Any local government may submit to the Commission for its approval an
39 erosion and sediment control program for its jurisdiction, and to this end local
40 governments are authorized to adopt ordinances, rules and regulations necessary to
41 establish and enforce such control programs, and they are authorized to create or
42 designate agencies or subdivisions of local government to administer and enforce the
43 programs. Local government ordinances shall at least meet and may exceed the
44 minimum requirements of this Article and rules adopted pursuant to this Article. Two or

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

6 (b) The Commission shall review each program submitted and within 90 days of
7 receipt thereof shall notify the local government submitting the program that it has been
8 approved, approved with modifications, or disapproved. The Commission shall only
9 approve a program upon determining that its standards equal or exceed those of ~~the~~
10 ~~model local erosion control ordinance developed in accordance with G.S. 113A-54(d)(1).~~ this
11 Article and rules adopted pursuant to this Article.

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

19 Sec. 7. G.S. 113A-61(a) reads as rewritten:

20 "(a) ~~Each local government's erosion and sediment control program shall require that~~
21 The Commission may require, for those land-disturbing activities requiring prior
22 approval of an erosion control plan, ~~such plan shall be submitted that a local government's~~
23 erosion and sediment control program require the submittal to the appropriate soil and
24 water conservation district-district, of a copy of each plan at the same time it is
25 submitted to the local government for approval. The soil and water conservation district
26 or districts, ~~within 20 days after receipt of the proposed plan, or within such additional time~~
27 as may be prescribed-agreed upon, but not to exceed 20 days, by the local government,
28 shall review the plan and submit its comments and recommendations to the local
29 government. Failure of the soil and water conservation district to submit its comments
30 and recommendations ~~within 20 days or within the prescribed additional time~~ shall not
31 delay final action on the proposed plan by the local government."

32 Sec. 8. G.S. 113A-61(b1) reads as rewritten:

33 "(b1) A local government may disapprove an erosion control plan upon finding that
34 an applicant, or any ~~parent or subsidiary~~ parent, subsidiary, or other affiliate of the
35 applicant corporation if the applicant is a corporation:

- 36 (1) Is conducting or has conducted land-disturbing activity without an
37 approved plan, or has received notice of violation of a plan previously
38 approved by the Commission or a local government pursuant to this
39 Article and has not complied with the notice within the time specified
40 in the notice;
- 41 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a
42 local ordinance adopted pursuant to this Article which is due and for
43 which no appeal is pending;

- 1 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or
2 any criminal provision of a local ordinance adopted pursuant to this
3 Article; or
4 (4) Has failed to substantially comply with State rules or local ordinances
5 and regulations adopted pursuant to this Article."

6 Sec. 9. G.S. 113A-61.1 reads as rewritten:

7 **"§ 113A-61.1. Periodic inspection of land-disturbing activity.**

8 With respect to approved plans for erosion control in connection with land-
9 disturbing activities, the approving authority, either the Commission or a local
10 government, shall provide for periodic inspection of the land-disturbing activity to
11 ensure compliance with the approved plan, and to determine whether the measures
12 required in the plan are effective in controlling erosion and sediment resulting from the
13 land-disturbing activities. Notice of such right of inspection shall be included in the
14 certificate of approval for the plan. If the approving authority determines that the
15 person engaged in the land-disturbing activities has failed to comply with the plan, the
16 authority shall immediately serve upon that person by registered ~~mail~~ or certified mail,
17 or by any other means authorized under G.S. 1A-1, Rule 4, a notice ~~to comply of~~
18 violation. The notice shall set forth the measures needed to come into compliance with
19 the plan and shall state the time within which such measures must be completed. If the
20 person engaged in the land-disturbing activities fails to comply within the time
21 specified, he shall be deemed in violation of this Article."

22 Sec. 10. G.S. 113A-64(a) reads as rewritten:

23 "(a) Civil Penalties. –

- 24 (1) Any person who violates any of the provisions of this Article or any
25 ordinance, rule, or order adopted or issued pursuant to this Article by
26 the Commission or by a local government, or who initiates or
27 continues a land-disturbing activity for which an erosion control plan
28 is required except in accordance with the terms, conditions, and
29 provisions of an approved plan, or who willfully and unlawfully
30 resists, delays, or obstructs an authorized representative of the
31 Commission or a local government or an employee or agent of the
32 Department while the representative, employee, or agent is discharging
33 or attempting to discharge any duty under this Article shall be subject
34 to a civil penalty of not more than five hundred dollars (\$500.00),
35 except that the penalty for failure to submit an erosion control plan shall be
36 as provided in subdivision (4) of this subsection and the penalty for
37 violating a stop-work order shall be as provided in subdivision (5) of
38 this subsection. No penalty shall be assessed until the person alleged
39 to be in violation has been notified of the violation. The Secretary may
40 notify a person of an alleged violation by any means by which service
41 of process is authorized by G.S. 1A-1, Rule 4. A civil penalty may be
42 assessed from the date the notice of violation is served. Each day of a
43 continuing violation shall constitute a separate violation.

- 1 (2) The Secretary, for violations under the Commission's jurisdiction, ~~or~~
2 ~~the governing body of any local government having jurisdiction, shall~~
3 ~~determine the amount of the civil penalty to be assessed under this~~
4 ~~subsection and shall make written demand for payment upon the~~
5 ~~person responsible for the violation, and shall set forth in detail the~~
6 ~~violation for which the penalty has been invoked. shall notify any~~
7 ~~person assessed a civil penalty of the assessment and the specific~~
8 ~~reasons for the assessment by any means authorized under G.S. 1A-1,~~
9 ~~Rule 4. The notice of assessment shall direct the violator to either pay~~
10 ~~the assessment or contest the assessment. If payment is not received or~~
11 ~~equitable settlement reached within 30 days after demand for payment~~
12 ~~is made, the Secretary shall refer the matter to the Attorney General for~~
13 ~~the institution of a civil action in the name of the State in the superior~~
14 ~~court of the county in which the violation is alleged to have occurred~~
15 ~~to recover the amount of the penalty. If the violator does not pay the~~
16 ~~assessment or reach an equitable settlement within 30 days after the~~
17 ~~violator is notified of the notice of assessment or, if the violator has~~
18 ~~contested the assessment within 30 days after the violator is notified of~~
19 ~~the final agency decision, the Department shall request the Attorney~~
20 ~~General to institute a civil action to recover the amount of the~~
21 ~~assessment in the superior court of any county in which the violation~~
22 ~~occurred, the violator resides, or the violator's principal place of~~
23 ~~business. A civil action under this section shall be filed within three~~
24 ~~years of the date the final agency decision was served on the violator.~~
25 ~~The governing body of any local government that administers a local~~
26 ~~erosion and sediment control program shall notify any person assessed~~
27 ~~a civil penalty of the assessment by any means authorized under G.S.~~
28 ~~1A-1, Rule 4. ~~Local governments shall refer such matters to their~~~~
29 ~~respective attorneys for the institution of a civil action in the name of~~
30 ~~the local government.~~ A local government may institute a civil action to
31 ~~recover an assessment in the appropriate division of the General Court~~
32 ~~of Justice of the county in which the violation is alleged to have~~
33 ~~occurred for recovery of the penalty. ~~of any county in which the~~~~
34 ~~violation occurred, the violator resides, or the violator's principal place~~
35 ~~of business to recover the amount of the assessment. ~~Such~~~~ A civil
36 ~~action~~ action must be filed within three years of the date the final
37 ~~agency decision was served on the violator. Any sums recovered shall~~
38 ~~be used to carry out the purposes and requirements of this Article.~~
- 39 (3) In determining the amount of the penalty, the Secretary shall consider
40 the degree and extent of harm caused by the violation, the cost of
41 rectifying the damage, the amount of money the violator saved by his
42 noncompliance, whether the violation was committed willfully and the
43 prior record of the violator in complying or failing to comply with this
44 Article.

1 (4) Any person who fails to submit an erosion control plan for approval by
2 the Commission pursuant to G.S. 113A-54(d)(4) or by a local
3 government pursuant to G.S. 113A-61 shall be subject to a single,
4 noncontinuing civil penalty of not more than one thousand dollars
5 (\$1,000). Any penalty which is recovered pursuant to this subdivision
6 shall be deposited in the General Fund. Any person who is subject to a
7 civil penalty under this subdivision may be subject to additional civil
8 penalties for violation of any other provision of this Article or any
9 ordinance, rule, or order adopted or issued pursuant to this Article by
10 the Commission or a local government.

11 (5) Any person who violates a stop-work order issued pursuant to G.S.
12 113A-65.1 shall be subject to a civil penalty of not more than five
13 thousand dollars (\$5,000). No penalty shall be assessed until the
14 person alleged to be in violation has been notified of the violation.
15 Each day of a continuing violation shall be a separate violation."

16 Sec. 11. Article 4 of Chapter 113A is amended by adding a new section to
17 read:

18 **"§ 113A-64.1. Restoration.**

19 In addition to any other civil or criminal penalty or injunctive relief authorized under
20 this Article, the Secretary or any local government that administers a local erosion and
21 sediment control program may require that a violator engaged in land-disturbing
22 activities restore the affected waters and land in order to minimize the detrimental
23 effects of the land-disturbing activities from pollution by sedimentation."

24 Sec. 12. G.S. 113A-65 reads as rewritten:

25 **"§ 113A-65. Injunctive relief.**

26 (a) Violation of State Program. – Whenever the Secretary has reasonable cause to
27 believe that any person is violating or is threatening to violate the requirements of this
28 ~~Article~~Article, or has obstructed, hampered, or interfered with an authorized
29 representative of the Commission or an employee or agent of the Department while the
30 representative, employee, or agent is discharging or attempting to discharge any duty
31 under this Article, he the Secretary may, either before or after the institution of any other
32 action or proceeding authorized by this Article, institute a civil action for injunctive
33 relief to restrain the ~~violation or violation, threatened violation, violation, or obstruction,~~
34 hampering, or interference with a representative of the Commission while in the process
35 of carrying out official duties. The action shall be brought in the superior court of the
36 county in which the ~~violation or violation, threatened violation, violation, or obstruction,~~
37 hampering, or interference is occurring or about to occur, and shall be in the name of the
38 State upon the relation of the Secretary.

39 (b) Violation of Local Program. – Whenever the governing body of a local
40 government having jurisdiction has reasonable cause to believe that any person is
41 violating or is threatening to violate any ordinance, rule, regulation, or order adopted or
42 issued by the local government pursuant to this Article, or any term, condition or
43 provision of an erosion control plan over which it has jurisdiction, or has obstructed,
44 hampered, or interfered with an authorized representative of the local government while

1 the representative is discharging or attempting to discharge any duty under this Article,
2 may, either before or after the institution of any other action or proceeding authorized
3 by this Article, institute a civil action in the name of the local government for injunctive
4 relief to restrain the ~~violation or violation,~~ threatened ~~violation-~~violation, or obstruction,
5 hampering, or interference. The action shall be brought in the superior court of the
6 county in which the violation or obstruction, hampering, or interference is occurring or
7 is threatened.

8 (c) Abatement, etc., of Violation. – Upon determination by a court that an alleged
9 violation is occurring or is threatened, it shall enter such orders or judgments as are
10 necessary to abate the ~~violation-~~violation, to restore the affected waters and land, or to
11 prevent the threatened violation. The institution of an action for injunctive relief under
12 subsections (a) or (b) of this section shall not relieve any party to such proceeding from
13 any civil or criminal penalty prescribed for violations of this Article."

14 Sec. 13. Section 4 of this act is effective upon ratification. The remaining
15 sections become effective October 1, 1993.