

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 644*
Committee Substitute Favorable 4/22/93
Committee Substitute #2 Favorable 5/6/93

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(1) Repealed by Session Laws 1973, c. 1417, s. 1.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, is controlled by, or is under common control with another 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

1 results in a change in the natural cover or topography and that may
2 cause or contribute to sedimentation. This Article shall not apply to
3 the following land-disturbing activities:

4 a. Those undertaken on agricultural land for the production of
5 plants and animals useful to man, including but not limited to:
6 forages and sod crops, grains and feed crops, tobacco, cotton,
7 and peanuts; dairy animals and dairy products; poultry and
8 poultry products; livestock, including beef cattle, sheep, swine,
9 horses, ponies, mules or goats, including the breeding and
10 grazing of any or all such animals; bees and apiary products; fur
11 ~~animals;~~ animals.

12 b. Those undertaken on forestland for the production and
13 harvesting of timber and timber products and which are
14 conducted in accordance with Forest Practice Guidelines
15 Related to Water Quality (best management practices) as
16 adopted by the ~~Department;~~ and Department.

17 c. ~~Activities undertaken by persons as defined in G.S. 113A-52(8)~~
18 ~~who are otherwise regulated by the provisions of G.S. 74-46~~
19 ~~through G.S. 74-68, the Mining Act of 1971. for which a permit~~
20 ~~is required under Article 7 of Chapter 74 of the General~~
21 Statutes.

22 d. For the duration of an emergency, activities essential to protect
23 human life, including those activities undertaken by a rail
24 company at the direction of the United States Secretary of
25 Transportation under Title 45, Chapter 13, of the United States
26 Code.

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

31 (7a) 'Parent' means an affiliate that directly, or indirectly through one or
32 more intermediaries, controls another person.

33 (8) 'Person' means any individual, partnership, firm, association, joint
34 venture, public or private corporation, trust, estate, commission, board,
35 public or private institution, utility, cooperative, interstate body, or
36 other legal entity.

37 (9) 'Secretary' means the Secretary of Environment, Health, and Natural
38 Resources.

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

42 (10a) 'Subsidiary' means an affiliate that is directly, or indirectly through
43 one or more intermediaries, controlled by another person.

1 ~~(10a)~~(10b) 'Tract' means all contiguous land and bodies of water being
2 disturbed or to be disturbed as a unit, regardless of ownership.

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

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

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

9 (1) Assist and encourage local governments in developing erosion and
10 sediment control programs and as part of such assistance to develop a
11 model local erosion control ~~ordinance, and ordinance.~~ The Commission
12 shall approve, approve as modified, or disapprove local ~~plans~~programs
13 submitted to it pursuant to G.S. 113A-60;

14 (2) Assist and encourage other State agencies in developing erosion and
15 sedimentation control programs to be administered in their
16 jurisdictions, and to approve, approve as modified, or disapprove such
17 programs submitted pursuant to G.S. 113A-56 and from time to time
18 review such programs for compliance with ~~regulations issued~~ rules
19 adopted by the Commission and for adequate enforcement;

20 (3) Develop recommended methods of control of sedimentation and
21 prepare and make available for distribution publications and other
22 materials dealing with sedimentation control techniques appropriate
23 for use by persons engaged in land-disturbing activities, general
24 educational materials on erosion and sedimentation control, and
25 instructional materials for persons involved in the enforcement of
26 erosion control regulations, ordinances, and plans;

27 (4) Require submission of erosion control plans by those responsible for
28 initiating land-disturbing activities for approval prior to
29 commencement of the activities."

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

31 "**§ 113A-54.1. Approval of erosion control plans.**

32 (a) A draft erosion control plan must contain the applicant's address and, if the
33 applicant is not a resident of North Carolina, designate a North Carolina agent for the
34 purpose of receiving notice from the Commission or the Secretary of compliance or
35 noncompliance with the plan, this Article, or any rules adopted pursuant to this Article.
36 The Commission ~~must either approve or~~ shall approve, approve with modifications, or
37 disapprove a draft erosion control plan for those land-disturbing activities for which
38 prior plan approval is required within 30 days of receipt. Failure to ~~approve~~ approve,
39 approve with modifications, or disapprove a completed draft erosion control plan within
40 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves
41 a draft erosion control plan, it must state in writing the specific reasons that the plan was
42 disapproved. Failure to ~~approve~~ approve, approve with modifications, or disapprove a
43 revised erosion control plan within 15 days of receipt shall be deemed approval of the

1 plan. The Commission may establish an expiration date for erosion control plans
2 approved under this Article.

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

9 (c) The Director of the Division of Land Resources may disapprove an erosion
10 control plan upon finding that an ~~applicant, or any parent or subsidiary corporation if the~~
11 ~~applicant is a corporation:~~ applicant or a parent, a subsidiary, or another affiliate of the
12 applicant:

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

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

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

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

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

37 "**§ 113A-55. Authority of the Secretary.**

38 The sedimentation control program developed by the Commission shall be
39 administered by the Secretary under the direction of the Commission. To this end the
40 Secretary ~~is authorized and directed to employ, with the approval of the Commission, shall~~
41 employ the necessary clerical, technical, and administrative personnel, and ~~to~~ assign
42 tasks to the various divisions of the Department for the purpose of implementing this
43 Article. The Secretary ~~is authorized to~~ may bring enforcement actions pursuant to G.S.

1 113A-64 and 113A-65. The Secretary shall make final agency decisions in contested
2 cases that arise from civil penalty assessments pursuant to G.S. 113A-64."

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

4 **"§ 113A-60. Local erosion control programs.**

5 (a) Any local government may submit to the Commission for its approval an
6 erosion and sediment control program for its jurisdiction, and to this end local
7 governments are authorized to adopt ordinances, rules and regulations necessary to
8 establish and enforce such control programs, and they are authorized to create or
9 designate agencies or subdivisions of local government to administer and enforce the
10 programs. Local government ordinances shall at least meet and may exceed the
11 minimum requirements of this Article and the rules adopted pursuant to this Article.
12 Two or more units of local government are authorized to establish a joint program and
13 to enter into such agreements as are necessary for the proper administration and
14 enforcement of such program. The resolutions establishing any joint program must be
15 duly recorded in the minutes of the governing body of each unit of local government
16 participating in the program, and a certified copy of each resolution must be filed with
17 the Commission.

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

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

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

32 "(a) ~~Each local government's erosion and sediment control program shall require that~~
33 The Commission may require, for those land-disturbing activities requiring prior
34 approval of an erosion control plan, ~~such plan shall be submitted that a local government's~~
35 erosion and sediment control program require the submittal to the appropriate soil and
36 water conservation district-district of a copy of each plan at the same time it is submitted
37 to the local government for approval. The soil and water conservation district or
38 districts, ~~within 20 days after receipt of the proposed plan, or within such additional-time as~~
39 ~~may be prescribed agreed upon, but not to exceed 20 days, by the local government,~~ shall
40 review the plan and submit its comments and recommendations to the local government.
41 Failure of the soil and water conservation district to submit its comments and
42 recommendations ~~within 20 days or within the prescribed additional-time~~ shall not delay
43 final action on the proposed plan by the local government."

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

1 "(b1) A local government may disapprove an erosion control plan upon finding that
2 an applicant, or any parent or subsidiary corporation if the applicant is a corporation: applicant
3 or a parent, a subsidiary, or another affiliate of the applicant:

- 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;~~ by the time the payment is due;
- 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 Sec. 9. G.S. 113A-61.1 reads as rewritten:

18 **"§ 113A-61.1. ~~Periodic inspection~~ Inspection of land-disturbing activity.**

19 ~~With respect to approved plans for erosion control in connection with land-~~
20 ~~disturbing activities, the approving authority, either the The Commission or a local~~
21 ~~government, government, as appropriate, shall provide for ~~periodic~~ the inspection of ~~the~~~~
22 ~~any land-disturbing activity to ensure compliance with ~~the approved plan, this Article~~~~
23 ~~and to ~~determine whether~~ ensure that the measures required in ~~the an~~ an erosion control~~
24 ~~plan are effective in controlling erosion and sediment resulting from the land-disturbing~~
25 ~~activities.~~ activity. Notice of ~~such~~ this right of inspection shall be included in the
26 certificate of approval for ~~the an~~ an erosion control plan. A person may not willfully resist,
27 delay, or obstruct an authorized representative of the Commission, an authorized
28 representative of a local government, or an employee or an agent of the Department
29 while the representative, employee, or agent is inspecting or attempting to inspect a
30 land-disturbing activity under this section.

31 If the approving authority determines that the person engaged in the land-disturbing
32 ~~activities~~ activity has failed to comply with ~~the plan, this Article,~~ the authority shall
33 immediately serve a notice of violation upon that person by registered mail a notice to
34 comply. The notice person. The notice may be served by any means authorized under
35 G.S. 1A-1, Rule 4. A notice shall set a date by which the person must comply with this
36 Article and inform the person of the actions that need to be taken to comply with this
37 Article. ~~shall set forth the measures needed to come into compliance with the plan and shall~~
38 state the time within which such measures must be completed. If the A person engaged in the
39 land-disturbing activities ~~who~~ fails to comply within the time specified, ~~he~~ shall be
40 specified ~~deemed in violation of this Article.~~ is subject to the civil and criminal sanctions
41 provided in this Article."

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

- 43 "(a) Civil Penalties. –

1 (1) Any person who violates any of the provisions of this Article or any
2 ordinance, rule, or order adopted or issued pursuant to this Article by
3 the Commission or by a local government, or who initiates or
4 continues a land-disturbing activity for which an erosion control plan
5 is required except in accordance with the terms, conditions, and
6 provisions of an approved plan, ~~shall be~~ is subject to a civil ~~penalty of~~
7 ~~not more than~~ penalty. The maximum civil penalty for a violation,
8 other than a violation of a stop-work order issued under G.S. 113A-
9 65.1, is five hundred dollars (\$500.00), except that the penalty for failure
10 to submit an erosion control plan shall be as provided in subdivision (4) of
11 this subsection and the penalty for violating a stop-work order shall be as
12 provided in subdivision (5) of this subsection. (\$500.00). The maximum
13 civil penalty for a violation of a stop-work order is five thousand
14 dollars (\$5,000). No penalty shall be assessed until the person alleged
15 to be in violation has been notified of the violation. The Secretary may
16 notify a person of an alleged violation by any means by which service
17 of process is authorized by G.S. 1A-1, Rule 4. A civil penalty may be
18 assessed from the date the notice of violation is served. Each day of a
19 continuing violation shall constitute a separate violation.

20 (2) ~~The Secretary, for violations under the Commission's jurisdiction, or~~
21 ~~the governing body of any local government having jurisdiction, shall~~
22 ~~determine the amount of the civil penalty to be assessed under this~~
23 ~~subsection and shall make written demand for payment upon the~~
24 ~~person responsible for the violation, and shall set forth in detail the~~
25 ~~violation for which the penalty has been invoked. If payment is not~~
26 ~~received or equitable settlement reached within 30 days after demand~~
27 ~~for payment is made, the Secretary shall refer the matter to the~~
28 ~~Attorney General for the institution of a civil action in the name of the~~
29 ~~State in the superior court of the county in which the violation is~~
30 ~~alleged to have occurred to recover the amount of the penalty. Local~~
31 ~~governments shall refer such matters to their respective attorneys for~~
32 ~~the institution of a civil action in the name of the local government in~~
33 ~~the appropriate division of the General Court of Justice of the county~~
34 ~~in which the violation is alleged to have occurred for recovery of the~~
35 ~~penalty. A person who is assessed a civil penalty shall be notified of~~
36 ~~the penalty and the reasons for assessing the penalty. The notice of~~
37 ~~assessment shall be served by any means authorized under G.S. 1A-1,~~
38 ~~Rule 4, and shall direct the violator to either pay the assessment or~~
39 ~~contest the assessment.~~

40 If a violator does not pay an assessment imposed by the
41 Department within 30 days after it is due, the Department shall request
42 the Attorney General to institute a civil action to recover the amount of
43 the assessment. If a violator does not pay an assessment imposed by a
44 local government within 30 days after it is due, the local government

1 may institute a civil action to recover the amount of the assessment.
2 The civil action may be brought in the superior court of any county
3 where the violation occurred or the violator's residence or principal
4 place of business is located. ~~Such a civil actions action~~ must be filed
5 within three years of the date the final agency decision was served on the
6 violator. ~~assessment was due.~~ An assessment that is not contested is
7 due when the violator is served with a notice of assessment. An
8 assessment that is contested is due at the conclusion of the
9 administrative and judicial review of the assessment. Any sums
10 recovered shall be used to carry out the purposes and requirements of
11 this Article.

12 (3) In determining the amount of the penalty, the Secretary shall consider
13 the degree and extent of harm caused by the violation, the cost of
14 rectifying the damage, the amount of money the violator saved by his
15 noncompliance, whether the violation was committed willfully and the
16 prior record of the violator in complying or failing to comply with this
17 Article.

18 (4) ~~Any person who fails to submit an erosion control plan for approval by~~
19 ~~the Commission pursuant to G.S. 113A-54(d)(4) or by a local~~
20 ~~government pursuant to G.S. 113A-61 shall be subject to a single,~~
21 ~~noncontinuing civil penalty of not more than one thousand dollars~~
22 ~~(\$1,000). Any penalty which is recovered pursuant to this subdivision~~
23 ~~shall be deposited in the General Fund. Any person who is subject to a~~
24 ~~civil penalty under this subdivision may be subject to additional civil~~
25 ~~penalties for violation of any other provision of this Article or any~~
26 ~~ordinance, rule, or order adopted or issued pursuant to this Article by~~
27 ~~the Commission or a local government.~~

28 (5) ~~Any person who violates a stop work order issued pursuant to G.S.~~
29 ~~113A-65.1 shall be subject to a civil penalty of not more than five~~
30 ~~thousand dollars (\$5,000). No penalty shall be assessed until the~~
31 ~~person alleged to be in violation has been notified of the violation.~~
32 ~~Each day of a continuing violation shall be a separate violation."~~

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

35 **"§ 113A-64.1. Restoration of areas affected by failure to comply.**

36 The Secretary or a local government that administers a local erosion and sediment
37 control program may require a person who engaged in a land-disturbing activity and
38 failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to
39 restore the waters and land affected by the failure so as to minimize the detrimental
40 effects of the resulting pollution by sedimentation. This authority is in addition to any
41 other civil or criminal penalty or injunctive relief authorized under this Article."

42 Sec. 12. G.S. 113A-65(c) reads as rewritten:

43 "(c) Abatement, etc., of Violation. – Upon determination by a court that an alleged
44 violation is occurring or is threatened, it shall enter such orders or judgments as are

1 necessary to abate the ~~violation~~-violation, to ensure that restoration is performed, or to
2 prevent the threatened violation. The institution of an action for injunctive relief under
3 subsections (a) or (b) of this section shall not relieve any party to such proceeding from
4 any civil or criminal penalty prescribed for violations of this Article."

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