

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 570*

Short Title: Improve Sedimentation Control.

(Public)

Sponsors: Senators Tally; Gulley, Ward, Winner of Mecklenburg, Odom, Blackmon, Cochran, and Kerr.

Referred to: Environment and Natural Resources.

March 25, 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(1) Repealed by Session Laws 1973, c. 1417, s. 1.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' has the same meaning as set forth in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1992 Edition).

(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' has the same meaning as set forth in 17 Code of Federal
24 Regulations § 240.12(b)-2 (1 April 1992 Edition).

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' has the same meaning as set forth in 17 Code of Federal
35 Regulations § 240.12(b)-2 (1 April 1992 Edition).

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

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

26 "**§ 113A-54.1. Approval of erosion control plans.**

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

41 (b) If, following commencement of a land-disturbing activity pursuant to an
 42 approved erosion control plan, the Commission determines that the plan is inadequate to
 43 meet the requirements of this Article, the Commission may require such revisions of the
 44 plan as are necessary to comply with this Article. Failure to ~~approve~~ approve, approve

1 with modifications, or disapprove a revised erosion control plan within 15 days of
2 receipt shall be deemed approval of the plan.

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

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

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

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

26 "(b) The Sedimentation Account is established. The Sedimentation Account shall
27 be a nonreverting account within the Department and shall be administered by the State
28 Treasurer. The Sedimentation Account shall be treated as a special trust fund and shall
29 be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-
30 69.3. Fees collected under this section shall be credited to the Account and shall be
31 applied to the costs of administering this Article."

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

33 **"§ 113A-55. Authority of the Secretary.**

34 The sedimentation control program developed by the Commission shall be
35 administered by the Secretary under the direction of the Commission. To this end the
36 Secretary ~~is authorized and directed to employ, with the approval of the Commission, shall~~
37 employ the necessary clerical, technical, and administrative personnel, and to assign
38 tasks to the various divisions of the Department for the purpose of implementing this
39 Article. The Secretary ~~is authorized to~~ may bring enforcement actions pursuant to G.S.
40 113A-64 and 113A-65. The Secretary shall make final agency decisions in contested
41 cases that arise from civil penalty assessments pursuant to G.S. 113A-64."

42 Sec. 6. G.S. 113A-60(b) reads as rewritten:

43 "(b) The Commission shall review each program submitted and within 90 days of
44 receipt thereof shall notify the local government submitting the program that it has been

1 approved, approved with modifications, or disapproved. The Commission shall only
2 approve a program upon determining that its standards equal or exceed those of the
3 ~~model local erosion control ordinance developed in accordance with G.S. 113A-54(d)(1).~~ this
4 Article and rules adopted pursuant to this Article."

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

6 "(a) ~~Each local government's erosion and sediment control program shall require that~~
7 The Commission may require, for those land-disturbing activities requiring prior
8 approval of an erosion control plan, ~~such plan shall be submitted that a local government's~~
9 erosion and sediment control program require the submittal of, to the appropriate soil
10 and water conservation ~~district~~ district, a copy of each plan at the same time it is
11 submitted to the local government for approval. The soil and water conservation district
12 or districts, ~~within 20 days after receipt of the proposed plan, or within such additional time~~
13 as may be prescribed agreed upon, but not to exceed 20 days, by the local government,
14 shall review the plan and submit its comments and recommendations to the local
15 government. Failure of the soil and water conservation district to submit its comments
16 and recommendations ~~within 20 days or within the prescribed additional time~~ shall not
17 delay final action on the proposed plan by the local government."

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

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

- 22 (1) Is conducting or has conducted land-disturbing activity without an
23 approved plan, or has received notice of violation of a plan previously
24 approved by the Commission or a local government pursuant to this
25 Article and has not complied with the notice within the time specified
26 in the notice;
- 27 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a
28 local ordinance adopted pursuant to this Article which is due and for
29 which no appeal is pending;
- 30 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or
31 any criminal provision of a local ordinance adopted pursuant to this
32 Article; or
- 33 (4) Has failed to substantially comply with State rules or local ordinances
34 and regulations adopted pursuant to this Article."

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

36 "**§ 113A-61.1. Periodic inspection of land-disturbing activity.**

37 With respect to approved plans for erosion control in connection with land-
38 disturbing activities, the approving authority, either the Commission or a local
39 government, shall provide for periodic inspection of the land-disturbing activity to
40 ensure compliance with the approved plan, and to determine whether the measures
41 required in the plan are effective in controlling erosion and sediment resulting from the
42 land-disturbing activities. Notice of such right of inspection shall be included in the
43 certificate of approval for the plan. If the approving authority determines that the
44 person engaged in the land-disturbing activities has failed to comply with the plan, the

1 authority shall immediately serve upon that person by registered ~~mail~~ or certified mail,
2 or by any means authorized by G.S. 1A-1, Rule 4, a notice to comply of violation. The
3 notice shall set forth the measures needed to come into compliance with the plan and
4 shall state the time within which such measures must be completed. If the person
5 engaged in the land-disturbing activities fails to comply within the time specified, he
6 shall be deemed in violation of this Article."

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

8 "(a) Civil Penalties. –

9 (1) Any person who violates any of the provisions of this Article or any
10 ordinance, rule, or order adopted or issued pursuant to this Article by
11 the Commission or by a local government, or who initiates or
12 continues a land-disturbing activity for which an erosion control plan
13 is required except in accordance with the terms, conditions, and
14 provisions of an approved plan, or who obstructs, hampers, or
15 interferes with an authorized representative of the Commission or local
16 government while in the process of carrying out official duties, shall
17 be subject to a civil penalty of not more than five hundred dollars
18 (\$500.00), except that the penalty for failure to submit an erosion control
19 plan shall be as provided in subdivision (4) of this subsection and the
20 penalty for violating a stop-work order shall be as provided in
21 subdivision (5) of this subsection. No penalty shall be assessed until
22 the person alleged to be in violation has been notified of the violation.
23 The civil penalty may be assessed from the date of receipt of the notice
24 of violation. Each day of a continuing violation shall constitute a
25 separate violation.

26 (2) The Secretary, for violations under the Commission's jurisdiction, ~~or~~
27 ~~the governing body of any local government having jurisdiction, shall~~
28 ~~determine the amount of the civil penalty to be assessed under this~~
29 ~~subsection and shall make written demand for payment upon the~~
30 ~~person responsible for the violation, and shall set forth in detail the~~
31 ~~violation for which the penalty has been invoked. shall notify any~~
32 ~~person assessed a civil penalty of the assessment and the specific~~
33 ~~reasons for the assessment by registered or certified mail, or by any~~
34 ~~means authorized by G.S. 1A-1, Rule 4. The notice of assessment~~
35 ~~shall direct the violator to pay the assessment or contest the~~
36 ~~assessment. If payment is not received or equitable settlement reached~~
37 ~~within 30 days after demand for payment is made, the Secretary shall~~
38 ~~refer the matter to the Attorney General for the institution of a civil~~
39 ~~action in the name of the State in the superior court of the county in~~
40 ~~which the violation is alleged to have occurred to recover the amount~~
41 ~~of the penalty. If the violator does not pay the assessment within 30~~
42 ~~days after receipt of the notice of assessment or within 30 days after~~
43 ~~receipt of the final agency decision, where the assessment has been~~
44 ~~contested, the Department shall request the Attorney General to~~

1 institute a civil action to recover the amount of the assessment in the
 2 superior court of any county in which the violator resides or has its
 3 principal place of business. A civil action under this section shall be
 4 filed within three years of the date the final agency decision was
 5 served on the violator. The governing body of any local government
 6 having jurisdiction shall notify any person assessed a civil penalty in
 7 the manner prescribed by local ordinance. Local governments shall
 8 refer such matters to their respective attorneys for the institution of a
 9 civil action in the name of the local government in the appropriate
 10 division of the General Court of Justice of ~~the any~~ county in which the
 11 violation is alleged to have occurred for recovery of the penalty.
 12 violator resides or has its principal place of business to recover the
 13 amount of the assessment. Such civil actions must be filed within
 14 three years of the date the final agency decision was served on the
 15 violator. Any sums recovered shall be used to carry out the purposes
 16 and requirements of this Article.

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

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

33 (5) Any person who violates a stop-work order issued pursuant to G.S.
 34 113A-65.1 shall be subject to a civil penalty of not more than five
 35 thousand dollars (\$5,000). No penalty shall be assessed until the
 36 person alleged to be in violation has been notified of the violation.
 37 Each day of a continuing violation shall be a separate violation."

38 Sec. 11. G.S. 113A-65 reads as rewritten:

39 **"§ 113A-65. Injunctive relief.**

40 (a) Violation of State Program. – Whenever the Secretary has reasonable cause to
 41 believe that any person is violating or is threatening to violate the requirements of this
 42 ~~Article—Article~~, or has obstructed, hampered, or interfered with an authorized
 43 representative of the Commission while in the process of carrying out official duties, he
 44 may, either before or after the institution of any other action or proceeding authorized

1 by this Article, institute a civil action for injunctive relief to restrain the ~~violation or~~
2 violation, threatened ~~violation~~-violation, or obstruction, hampering, or interference with
3 a representative of the Commission while in the process of carrying out official duties.
4 The action shall be brought in the superior court of the county in which the ~~violation or~~
5 violation, threatened ~~violation~~-violation, or obstruction, hampering, or interference is
6 occurring or about to occur, and shall be in the name of the State upon the relation of
7 the Secretary.

8 (b) Violation of Local Program. – Whenever the governing body of a local
9 government having jurisdiction has reasonable cause to believe that any person is
10 violating or is threatening to violate any ordinance, rule, regulation, or order adopted or
11 issued by the local government pursuant to this Article, or any term, condition or
12 provision of an erosion control plan over which it has jurisdiction, or has obstructed,
13 hampered, or interfered with an authorized representative of the local government while
14 in the process of carrying out official duties, it may, either before or after the institution
15 of any other action or proceeding authorized by this Article, institute a civil action in the
16 name of the local government for injunctive relief to restrain the ~~violation or~~-violation,
17 threatened ~~violation~~-violation, or obstruction, hampering, or interference. The action
18 shall be brought in the superior court of the county in which the violation or
19 obstruction, hampering, or interference is occurring or is threatened.

20 (c) Abatement, etc., of Violation. – Upon determination by a court that an alleged
21 violation is occurring or is threatened, it shall enter such orders or judgments as are
22 necessary to abate the violation or to prevent the threatened violation. The institution of
23 an action for injunctive relief under subsections (a) or (b) of this section shall not relieve
24 any party to such proceeding from any civil or criminal penalty prescribed for violations
25 of this Article."

26 Sec. 12. This act is effective upon ratification.