

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 570*

Environment and Natural Resources Committee Substitute Adopted 4/19/93

Short Title: Improve Sedimentation Control.

(Public)

Sponsors:

Referred to:

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(1) Repealed by Session Laws 1973, c. 1417, s. 1.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.~~ 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. An approved erosion control plan shall be valid for not less than two nor more
 37 than five years, as determined by the Commission.

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 approve 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 and shall be administered by the State Treasurer. The Sedimentation
26 Account shall be treated as a special trust fund and shall be credited with interest by the
27 State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. Fees collected under this
28 section shall be credited to the Account and shall be applied to the costs of
29 administering this Article."

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

31 "**§ 113A-55. Authority of the Secretary.**

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

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

41 "**§ 113A-60. Local erosion control programs.**

42 (a) Any local government may submit to the Commission for its approval an
43 erosion and sediment control program for its jurisdiction, and to this end local
44 governments are authorized to adopt ordinances, rules and regulations necessary to

1 establish and enforce such control programs, and they are authorized to create or
2 designate agencies or subdivisions of local government to administer and enforce the
3 programs. Local government ordinances shall at least meet and may exceed the
4 minimum requirements of this Article and rules adopted pursuant to this Article. Two
5 or more units of local government are authorized to establish a joint program and to
6 enter into such agreements as are necessary for the proper administration and
7 enforcement of such program. The resolutions establishing any joint program must be
8 duly recorded in the minutes of the governing body of each unit of local government
9 participating in the program, and a certified copy of each resolution must be filed with
10 the Commission.

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

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

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

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

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

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

41 (1) Is conducting or has conducted land-disturbing activity without an
42 approved plan, or has received notice of violation of a plan previously
43 approved by the Commission or a local government pursuant to this

1 Article and has not complied with the notice within the time specified
2 in the notice;

3 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a
4 local ordinance adopted pursuant to this Article which is due and for
5 which no appeal is pending;

6 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or
7 any criminal provision of a local ordinance adopted pursuant to this
8 Article; or

9 (4) Has failed to substantially comply with State rules or local ordinances
10 and regulations adopted pursuant to this Article."

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

12 **"§ 113A-61.1. Periodic inspection of land-disturbing activity.**

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

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

28 "(a) Civil Penalties. –

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

1 person of an alleged violation by any means by which service of
2 process is authorized by G.S. 1A-1, Rule 4. A civil penalty may be
3 assessed from the day the notice of violation is served. Each day of a
4 continuing violation shall constitute a separate violation.

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

- 1 (3) In determining the amount of the penalty, the Secretary shall consider
2 the degree and extent of harm caused by the violation, the cost of
3 rectifying the damage, the amount of money the violator saved by his
4 noncompliance, whether the violation was committed willfully and the
5 prior record of the violator in complying or failing to comply with this
6 Article.
- 7 (4) ~~Any person who fails to submit an erosion control plan for approval by
8 the Commission pursuant to G.S. 113A-54(d)(4) or by a local
9 government pursuant to G.S. 113A-61 shall be subject to a single,
10 noncontinuing civil penalty of not more than one thousand dollars
11 (\$1,000). Any penalty which is recovered pursuant to this subdivision
12 shall be deposited in the General Fund. Any person who is subject to a
13 civil penalty under this subdivision may be subject to additional civil
14 penalties for violation of any other provision of this Article or any
15 ordinance, rule, or order adopted or issued pursuant to this Article by
16 the Commission or a local government.~~
- 17 (5) Any person who violates a stop-work order issued pursuant to G.S.
18 113A-65.1 shall be subject to a civil penalty of not more than five
19 thousand dollars (\$5,000). No penalty shall be assessed until the
20 person alleged to be in violation has been notified of the violation.
21 Each day of a continuing violation shall be a separate violation."

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

23 **"§ 113A-65. Injunctive relief.**

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

36 (b) Violation of Local Program. – Whenever the governing body of a local
37 government having jurisdiction has reasonable cause to believe that any person is
38 violating or is threatening to violate any ordinance, rule, regulation, or order adopted or
39 issued by the local government pursuant to this Article, or any term, condition or
40 provision of an erosion control plan over which it has jurisdiction, or has obstructed,
41 hampered, or interfered with an authorized representative of the local government while
42 the representative is discharging or attempting to discharge any duty under this Article,
43 it may, either before or after the institution of any other action or proceeding authorized
44 by this Article, institute a civil action in the name of the local government for injunctive

1 relief to restrain the ~~violation or violation,~~ threatened ~~violation.~~ violation, obstruction,
2 hampering, or interference. The action shall be brought in the superior court of the
3 county in which the ~~violation~~ violation, obstruction, hampering, or interference is
4 occurring or is threatened.

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

11 Sec. 12. Section 4 of this act becomes effective 30 June 1993. All other
12 sections of this act become effective 1 October 1993.