

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 279
Committee Substitute Favorable 4/18/13
Committee Substitute #2 Favorable 4/24/13

Short Title: Transfer Environmental Permits.

(Public)

Sponsors:

Referred to:

March 13, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO TRANSFER CERTAIN ENVIRONMENTAL PERMITS ASSOCIATED WITH PROPERTY DEVELOPMENT WHEN THE ORIGINAL PROPERTY OWNER IS UNWILLING OR UNABLE TO AGREE TO THE PERMIT TRANSFER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-214.7 is amended by adding a new subsection to read:

"§ 143-214.7. Stormwater runoff rules and programs.

...

(c5) The Department may transfer a permit issued pursuant to this section without the consent of the permit holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.

(1) The Department may transfer a permit if all of the following conditions are met:

a. The successor-owner of the property submits to the Department a written request for the transfer of the permit.

b. The Department finds all of the following:

1. The permit holder is one of the following:

I. A natural person who is deceased.

II. A corporation that has been dissolved.

III. A person who has been lawfully divested of title to the property on which the permitted activity is occurring or will occur.

IV. A person who has sold the property on which the permitted activity is occurring or will occur.

2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.

3. The successor-owner is the sole claimant of the right to engage in the permitted activity.

4. There will be no substantial change in the permitted activity.

(2) The permit holder shall comply with all terms and conditions of the permit until such time as the permit is transferred.

(3) The successor-owner shall comply with all terms and conditions of the permit once the permit has been transferred.



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1 (4) Notwithstanding changes to law made after the original issuance of the
2 permit, the Department may not impose new or different terms and
3 conditions in the permit without the prior express consent of the
4 successor-owner.

5 "

6 **SECTION 2.** G.S. 143-215.1 is amended by adding a new subsection to read:

7 "**§ 143-215.1. Control of sources of water pollution; permits required.**

8 ...

9 (d3) The Department may transfer a permit issued pursuant to subsection (d) of this
10 section without the consent of the permit holder to a successor-owner of the property on which
11 the permitted activity is occurring or will occur as provided in this subsection.

12 (1) The Department may transfer a permit if all of the following conditions are
13 met:

14 a. The successor-owner of the property submits to the Department a
15 written request for the transfer of the permit.

16 b. The Department finds all of the following:

17 1. The permit holder is one of the following:

18 I. A natural person who is deceased.

19 II. A corporation that has been dissolved.

20 III. A person who has been lawfully divested of title to the
21 property on which the permitted activity is occurring
22 or will occur.

23 IV. A person who has sold the property on which the
24 permitted activity is occurring or will occur.

25 2. The successor-owner holds title to the property on which the
26 permitted activity is occurring or will occur.

27 3. The successor-owner is the sole claimant of the right to
28 engage in the permitted activity.

29 4. There will be no substantial change in the permitted activity.

30 (2) The permit holder shall comply with all terms and conditions of the permit
31 until such time as the permit is transferred.

32 (3) The successor-owner shall comply with all terms and conditions of the
33 permit once the permit has been transferred.

34 (4) Notwithstanding changes to law made after the original issuance of the
35 permit, the Department may not impose new or different terms and
36 conditions in the permit without the prior express consent of the
37 successor-owner.

38 "

39 **SECTION 3.** G.S. 113A-54.1 reads as rewritten:

40 "**§ 113A-54.1. Approval of erosion control plans.**

41 (a) A draft erosion and sedimentation control plan must contain the applicant's address
42 and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for
43 the purpose of receiving notice from the Commission or the Secretary of compliance or
44 noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. Except
45 as provided in subsection (a1) of this section, if the applicant is not the owner of the land to be
46 disturbed, the draft erosion and sedimentation control plan must include the owner's written
47 consent for the applicant to submit a draft erosion and sedimentation control plan and to
48 conduct the anticipated land-disturbing activity. The Commission shall approve, approve with
49 modifications, or disapprove a draft erosion and sedimentation control plan for those
50 land-disturbing activities for which prior plan approval is required within 30 days of receipt.
51 The Commission shall condition approval of a draft erosion and sedimentation control plan

1 upon the applicant's compliance with federal and State water quality laws, regulations, and
2 rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion
3 and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan.
4 If the Commission disapproves a draft erosion and sedimentation control plan or a revised
5 erosion and sedimentation control plan, it must state in writing the specific reasons that the plan
6 was disapproved. Failure to approve, approve with modifications, or disapprove a revised
7 erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of
8 the plan. The Commission may establish an expiration date for erosion and sedimentation
9 control plans approved under this Article.

10 (a1) If the applicant is not the owner of the land to be disturbed and the anticipated
11 land-disturbing activity involves the construction of utility lines for the provision of water,
12 sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation
13 control plan may be submitted without the written consent of the owner of the land, so long as
14 the owner of the land has been provided prior notice of the project.

15 (b) If, following commencement of a land-disturbing activity pursuant to an approved
16 erosion and sedimentation control plan, the Commission determines that the plan is inadequate
17 to meet the requirements of this Article, the Commission may require any revision of the plan
18 that is necessary to comply with this Article. Failure to approve, approve with modifications, or
19 disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be
20 deemed approval of the plan.

21 (c) The Commission shall disapprove an erosion and sedimentation control plan if
22 implementation of the plan would result in a violation of rules adopted by the Environmental
23 Management Commission to protect riparian buffers along surface waters. The Director of the
24 Division of Energy, Mineral, and Land Resources may disapprove an erosion and
25 sedimentation control plan or disapprove a transfer of a plan under subsection (d1) of this
26 section upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

- 27 (1) Is conducting or has conducted land-disturbing activity without an approved
28 plan, or has received notice of violation of a plan previously approved by the
29 Commission or a local government pursuant to this Article and has not
30 complied with the notice within the time specified in the notice;
- 31 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local
32 ordinance adopted pursuant to this Article by the time the payment is due;
- 33 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any
34 criminal provision of a local ordinance adopted pursuant to this Article; or
- 35 (4) Has failed to substantially comply with State rules or local ordinances and
36 regulations adopted pursuant to this Article.

37 (d) In the event that an erosion and sedimentation control plan or a transfer of a plan is
38 disapproved by the Director pursuant to subsection (c) of this section, the Director shall state in
39 writing the specific reasons that the plan was disapproved. The applicant or the proposed
40 transferee may appeal the Director's disapproval of the plan to the Commission. For purposes
41 of this subsection and subsection (c) of this section, an applicant's record or a proposed
42 transferee's record may be considered for only the two years prior to the application date.

43 (d1) The Department may transfer an erosion and sedimentation control plan approved
44 pursuant to this section without the consent of the plan holder to a successor-owner of the
45 property on which the permitted activity is occurring or will occur as provided in this
46 subsection.

- 47 (1) The Department may transfer a plan if all of the following conditions are
48 met:
- 49 a. The successor-owner of the property submits to the Department a
50 written request for the transfer of the plan and an authorized
51 statement of financial responsibility and ownership.

1 **b.** The Department finds all of the following:

2 1. The plan holder is one of the following:

3 I. A natural person who is deceased.

4 II. A corporation that has been dissolved.

5 III. A person who has been lawfully divested of title to the
6 property on which the permitted activity is occurring
7 or will occur.

8 IV. A person who has sold the property on which the
9 permitted activity is occurring or will occur.

10 2. The successor-owner holds title to the property on which the
11 permitted activity is occurring or will occur.

12 3. The successor-owner is the sole claimant of the right to
13 engage in the permitted activity.

14 4. There will be no substantial change in the permitted activity.

15 (2) The plan holder shall comply with all terms and conditions of the plan until
16 such time as the plan is transferred.

17 (3) The successor-owner shall comply with all terms and conditions of the plan
18 once the plan has been transferred.

19 (4) Notwithstanding changes to law made after the original issuance of the plan,
20 the Department may not impose new or different terms and conditions in the
21 plan without the prior express consent of the successor-owner. Nothing in
22 this subsection shall prevent the Commission from requiring a revised plan
23 pursuant to G.S. 113A-54.1(b).

24 (e) The landowner, the financially responsible party, or the landowner's or the
25 financially responsible party's agent shall perform an inspection of the area covered by the plan
26 after each phase of the plan has been completed and after establishment of temporary ground
27 cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall
28 maintain and make available a record of the inspection at the site of the land-disturbing activity.
29 The record shall set out any significant deviation from the approved erosion control plan,
30 identify any measures that may be required to correct the deviation, and document the
31 completion of those measures. The record shall be maintained until permanent ground cover
32 has been established as required by the approved erosion and sedimentation control plan. The
33 inspections required by this subsection shall be in addition to inspections required by
34 G.S. 113A-61.1."

35 **SECTION 4.** G.S. 113A-61 reads as rewritten:

36 **"§ 113A-61. Local approval of erosion and sedimentation control plans.**

37 (a) For those land-disturbing activities for which prior approval of an erosion and
38 sedimentation control plan is required, the Commission may require that a local government
39 that administers an erosion and sedimentation control program approved under G.S. 113A-60
40 require the applicant to submit a copy of the erosion and sedimentation control plan to the
41 appropriate soil and water conservation district or districts at the same time the applicant
42 submits the erosion and sedimentation control plan to the local government for approval. The
43 soil and water conservation district or districts shall review the plan and submit any comments
44 and recommendations to the local government within 20 days after the soil and water
45 conservation district received the erosion and sedimentation control plan or within any shorter
46 period of time as may be agreed upon by the soil and water conservation district and the local
47 government. Failure of a soil and water conservation district to submit comments and
48 recommendations within 20 days or within agreed upon shorter period of time shall not delay
49 final action on the proposed plan by the local government.

50 (b) Local governments shall review each erosion and sedimentation control plan
51 submitted to them and within 30 days of receipt thereof shall notify the person submitting the

1 plan that it has been approved, approved with modifications, or disapproved. A local
2 government shall only approve a plan upon determining that it complies with all applicable
3 State and local regulations for erosion and sedimentation control.

4 (b1) A local government shall condition approval of a draft erosion and sedimentation
5 control plan upon the applicant's compliance with federal and State water quality laws,
6 regulations, and rules. A local government shall disapprove an erosion and sedimentation
7 control plan if implementation of the plan would result in a violation of rules adopted by the
8 Environmental Management Commission to protect riparian buffers along surface waters. A
9 local government may disapprove an erosion and sedimentation control plan or disapprove a
10 transfer of a plan under subsection (b3) of this section upon finding that an applicant or a
11 parent, subsidiary, or other affiliate of the applicant:

- 12 (1) Is conducting or has conducted land-disturbing activity without an approved
13 plan, or has received notice of violation of a plan previously approved by the
14 Commission or a local government pursuant to this Article and has not
15 complied with the notice within the time specified in the notice.
- 16 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local
17 ordinance adopted pursuant to this Article by the time the payment is due.
- 18 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any
19 criminal provision of a local ordinance adopted pursuant to this Article.
- 20 (4) Has failed to substantially comply with State rules or local ordinances and
21 regulations adopted pursuant to this Article.

22 (b2) In the event that an erosion and sedimentation control plan or a transfer of a plan is
23 disapproved by a local government pursuant to subsection (b1) of this section, the local
24 government shall so notify the Director of the Division of Energy, Mineral, and Land
25 Resources within 10 days of the disapproval. The local government shall advise the applicant
26 or the proposed transferee and the Director in writing as to the specific reasons that the plan
27 was disapproved. Notwithstanding the provisions of subsection (c) of this section, the applicant
28 may appeal the local government's disapproval of the plan directly to the Commission. For
29 purposes of this subsection and subsection (b1) of this section, an applicant's record or the
30 proposed transferee's record may be considered for only the two years prior to the application
31 date.

32 (b3) A local government administering an erosion and sedimentation control program
33 may transfer an erosion and sedimentation control plan approved pursuant to this section
34 without the consent of the plan holder to a successor-owner of the property on which the
35 permitted activity is occurring or will occur as provided in this subsection.

- 36 (1) The local government may transfer a plan if all of the following conditions
37 are met:
 - 38 a. The successor-owner of the property submits to the local government
39 a written request for the transfer of the plan and an authorized
40 statement of financial responsibility and ownership.
 - 41 b. The local government finds all of the following:
 - 42 1. The plan holder is one of the following:
 - 43 I. A natural person who is deceased.
 - 44 II. A corporation that has been dissolved.
 - 45 III. A person who has been lawfully divested of title to the
46 property on which the permitted activity is occurring
47 or will occur.
 - 48 IV. A person who has sold the property on which the
49 permitted activity is occurring or will occur.
 - 50 2. The successor-owner holds title to the property on which the
51 permitted activity is occurring or will occur.

- 1 3. The successor-owner is the sole claimant of the right to
2 engage in the permitted activity.
3 4. There will be no substantial change in the permitted activity.
4 (2) The plan holder shall comply with all terms and conditions of the plan until
5 such time as the plan is transferred.
6 (3) The successor-owner shall comply with all terms and conditions of the plan
7 once the plan has been transferred.
8 (4) Notwithstanding changes to law made after the original issuance of the plan,
9 the local government may not impose new or different terms and conditions
10 in the plan without the prior express consent of the successor-owner.
11 Nothing in this subsection shall prevent the local government from requiring
12 a revised plan pursuant to G.S. 113A-54.1(b).
13 (c) The disapproval or modification of any proposed erosion and sedimentation control
14 plan by a local government shall entitle the person submitting the plan to a public hearing if the
15 person submits written demand for a hearing within 15 days after receipt of written notice of
16 the disapproval or modification. The hearings shall be conducted pursuant to procedures
17 adopted by the local government. If the local government upholds the disapproval or
18 modification of a proposed erosion and sedimentation control plan following the public
19 hearing, the person submitting the erosion and sedimentation control plan is entitled to appeal
20 the local government's action disapproving or modifying the plan to the Commission. The
21 Commission, by regulation, shall direct the Secretary to appoint such employees of the
22 Department as may be necessary to hear appeals from the disapproval or modification of
23 erosion and sedimentation control plans by local governments. In addition to providing for the
24 appeal of local government decisions disapproving or modifying erosion and sedimentation
25 control plans to designated employees of the Department, the Commission shall designate an
26 erosion and sedimentation control plan review committee consisting of three members of the
27 Commission. The person submitting the erosion and sedimentation control plan may appeal the
28 decision of an employee of the Department who has heard an appeal of a local government
29 action disapproving or modifying an erosion and sedimentation control plan to the erosion and
30 sedimentation control plan review committee of the Commission. Judicial review of the final
31 action of the erosion and sedimentation control plan review committee of the Commission may
32 be had in the superior court of the county in which the local government is situated.
33 (d) Repealed by Session Laws 1989, c. 676, s. 4."
34 **SECTION 5.** This act is effective when it becomes law.