

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

H

1

HOUSE BILL 2506

Short Title: Sedimentation Ctrl/Local Gov't Enforcement. (Public)

Sponsors: Representative Allen.

Referred to: Environment and Natural Resources, if favorable, Commerce, Small Business, and Entrepreneurship.

May 26, 2008

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY THE PROCESS FOR APPEALS FROM CIVIL PENALTIES  
3 ASSESSED BY A LOCAL GOVERNMENT THAT HAS ESTABLISHED AND  
4 ADMINISTERS AN EROSION AND SEDIMENTATION CONTROL PROGRAM  
5 APPROVED UNDER G.S. 113A-60, AND TO PROVIDE THAT LOCAL  
6 GOVERNMENTS WITH APPROVED PROGRAMS MAY ISSUE STOPWORK  
7 ORDERS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW  
8 COMMISSION.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 113A-55 reads as rewritten:

11 "**§ 113A-55. Authority of the Secretary.**

12 The sedimentation control program developed by the Commission shall be  
13 administered by the Secretary under the direction of the Commission. To this end the  
14 Secretary shall employ the necessary clerical, technical, and administrative personnel,  
15 and assign tasks to the various divisions of the Department for the purpose of  
16 implementing this Article. The Secretary may bring enforcement actions pursuant to  
17 G.S. 113A-64 and G.S. 113A-65. The Secretary shall make final agency decisions in  
18 contested cases that arise from civil penalty assessments issued by the Department  
19 pursuant to G.S. 113A-64."

20 **SECTION 2.** G.S. 113A-64 reads as rewritten:

21 "**§ 113A-64. Penalties.**

22 (a) Civil Penalties. –

23 (1) Any person who violates any of the provisions of this Article or any  
24 ordinance, rule, or order adopted or issued pursuant to this Article by  
25 the Commission or by a local government, or who initiates or  
26 continues a land-disturbing activity for which an erosion and  
27 sedimentation control plan is required except in accordance with the  
28 terms, conditions, and provisions of an approved plan, is subject to a

1 civil penalty. The maximum civil penalty for a violation is five  
2 thousand dollars (\$5,000). A civil penalty may be assessed from the  
3 date of the violation. Each day of a continuing violation shall  
4 constitute a separate violation.

5 (2) ~~The Secretary or a local government that administers an erosion and~~  
6 ~~sedimentation control program approved under G.S. 113A-60 shall~~  
7 determine the amount of the civil penalty and shall notify the person  
8 who is assessed the civil penalty of the amount of the penalty and the  
9 reason for assessing the penalty. The notice of assessment shall be  
10 served by any means authorized under G.S. 1A-1, Rule 4, and shall  
11 direct the violator to either pay the assessment or contest the  
12 assessment within 30 days by filing a petition for a contested case  
13 under Article 3 of Chapter 150B of the General Statutes. If a violator  
14 does not pay a civil penalty assessed by the Secretary within 30 days  
15 after it is due, the Department shall request the Attorney General to  
16 institute a civil action to recover the amount of the assessment. ~~If a~~  
17 ~~violator does not pay a civil penalty assessed by a local government~~  
18 ~~within 30 days after it is due, the local government may institute a civil~~  
19 ~~action to recover the amount of the assessment.~~ The civil action may  
20 be brought in the superior court of any county where the violation  
21 occurred or the violator's residence or principal place of business is  
22 located. A civil action must be filed within three years of the date the  
23 assessment was due. An assessment that is not contested is due when  
24 the violator is served with a notice of assessment. An assessment that  
25 is contested is due at the conclusion of the administrative and judicial  
26 review of the assessment.

27 (3) In determining the amount of the penalty, the Secretary shall consider  
28 the degree and extent of harm caused by the violation, the cost of  
29 rectifying the damage, the amount of money the violator saved by  
30 noncompliance, whether the violation was committed willfully and the  
31 prior record of the violator in complying or failing to comply with this  
32 Article.

33 (4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

34 (5) The clear proceeds of civil penalties collected by the Department or  
35 other State agency under this subsection shall be remitted to the Civil  
36 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.  
37 Civil penalties collected by a local government under this subsection  
38 shall be ~~credited~~ remitted to the general county school fund of the local  
39 government as nontax revenue, county where the local government is  
40 located, unless the entity being fined is the county or a school funded  
41 by the county, in which case the funds shall be credited to the  
42 stormwater funds for the local government as nontax revenue.

43 (6) a. Where a local government has established and administers an  
44 erosion and sedimentation control program approved under

- 1           G.S. 113A-60, the local government, or its designee, shall  
2           determine the amount of the civil penalty and shall notify the  
3           person who is assessed the civil penalty of the amount of the  
4           penalty and the reason for assessing the penalty.
- 5           b. The issuance of a notice of violation and the assessment of a  
6           civil penalty by a local government shall entitle the violator to a  
7           quasi-judicial hearing contesting the issuance of the notice of  
8           violation and/or the assessment of the civil penalty. The notice  
9           of assessment shall be served on the violator by any means  
10           authorized under G.S. 1A-1, Rule 4, and shall direct the violator  
11           to either pay the assessment or contest the assessment within 60  
12           days by filing a demand for hearing with the local government  
13           as directed by its adopted procedures.
- 14           c. Review of the notice of violation and the assessment of a civil  
15           penalty shall be conducted pursuant to procedures adopted by  
16           the local government. If the local government has no adopted  
17           procedures, review shall be conducted under Articles 3 and 4 of  
18           Chapter 150B of the General Statutes. The demand for hearing  
19           by the local government shall be accompanied by such fees as  
20           established by the local government's adopted procedures. The  
21           local government, or its delegate, shall make the final agency  
22           decisions in contested cases arising from civil penalties  
23           assessed by the local government. Failure to timely file such  
24           demand and fee shall constitute a waiver of any rights to appeal  
25           the assessment of the civil penalty.
- 26           d. Every decision of the local government under local government  
27           procedures shall be subject to review by the superior court by  
28           proceedings in the nature of certiorari. Any petition for review  
29           by the superior court shall be filed with the clerk of superior  
30           court within 30 days after the decision of the local government,  
31           or its delegate, is delivered to the violator. The decision of the  
32           local government may be delivered to the violator either by  
33           personal service or by registered mail or certified mail return  
34           receipt requested.
- 35           e. If a violator does not pay a civil penalty assessed by a local  
36           government within 30 days after it is due, the local government  
37           may institute a civil action to recover the amount of the  
38           assessment. The civil action may be brought in the superior  
39           court of any county where the violation occurred or the  
40           violator's residence or principal place of business is located. A  
41           civil action must be filed within three years of the date the  
42           assessment was due. An assessment that is not contested is due  
43           when the violator is served with a notice of assessment. An

1                    assessment that is contested is due at the conclusion of the  
2                    administrative and judicial review of the assessment.

3            (b) Criminal Penalties. – Any person who knowingly or willfully violates any  
4 provision of this Article or any ordinance, rule, regulation, or order duly adopted or  
5 issued by the Commission or a local government, or who knowingly or willfully  
6 initiates or continues a land-disturbing activity for which an erosion and sedimentation  
7 control plan is required, except in accordance with the terms, conditions, and provisions  
8 of an approved plan, shall be guilty of a Class 2 misdemeanor that may include a fine  
9 not to exceed five thousand dollars (\$5,000)."

10            **SECTION 3.** G.S. 113A-65.1 reads as rewritten:

11            "**§ 113A-65.1. Stop-work orders. orders issued by Secretary or local government.**

12            (a) The Secretary may issue a stop-work order if he finds that a land-disturbing  
13 activity is being conducted in violation of this Article or of any rule adopted or order  
14 issued pursuant to this Article, that the violation is knowing and willful, and that either:

- 15            (1) Off-site sedimentation has eliminated or severely degraded a use in a  
16 lake or natural watercourse or that such degradation is imminent.  
17            (2) Off-site sedimentation has caused severe damage to adjacent land or  
18 that such damage is imminent.  
19            (3) The land-disturbing activity is being conducted without an approved  
20 plan.

21            (a1) A local government that has established and administers an erosion and  
22 sedimentation control program approved under G.S. 113A-60 may issue a stopwork  
23 order if the local government finds that a land-disturbing activity is being conducted in  
24 violation of this Article or of any rule adopted or order issued pursuant to this Article,  
25 that the violation is knowing and willful, and that either:

- 26            (1) Off-site sedimentation has eliminated or severely degraded a use in a  
27 lake or natural watercourse or that such degradation is imminent.  
28            (2) Off-site sedimentation has caused severe damage to adjacent land or  
29 that such damage is imminent.  
30            (3) The land-disturbing activity is being conducted without an approved  
31 plan.

32            (b) The stop-work order shall be in writing and shall state what work is to be  
33 stopped and what measures are required to abate the violation. The order shall include a  
34 statement of the findings made by the ~~Secretary~~ issuing authority pursuant to ~~subsection~~  
35 subsections (a) or (a1) of this section, and shall list the conditions under which work  
36 that has been stopped by the order may be resumed. The delivery of equipment and  
37 materials which does not contribute to the violation may continue while the stop-work  
38 order is in effect. A copy of this section shall be attached to the order.

39            (c) The stop-work order shall be served by the sheriff of the county in which the  
40 land-disturbing activity is being conducted or by some other person duly authorized by  
41 law to serve process as provided by G.S. 1A-1, Rule 4, and shall be served on the  
42 person at the site of the land-disturbing activity who is in operational control of the  
43 land-disturbing activity. The sheriff or other person duly authorized by law to serve  
44 process shall post a copy of the stop-work order in a conspicuous place at the site of the

1 land-disturbing activity. The ~~Department~~ issuing authority shall also deliver a copy of  
2 the stop-work order to any person that the ~~Department~~ issuing authority has reason to  
3 believe may be responsible for the violation.

4 (d) The directives of a stop-work order become effective upon service of the  
5 order. Thereafter, any person notified of the stop-work order who violates any of the  
6 directives set out in the order may be assessed a civil penalty as provided in  
7 G.S. 113A-64(a). A stop-work order issued pursuant to this section may be issued for a  
8 period not to exceed five days.

9 (e) The ~~Secretary~~ issuing authority shall designate an employee of the  
10 ~~Department~~ issuing authority to monitor compliance with the stop-work order. The  
11 name of the employee so designated shall be included in the stop-work order. The  
12 employee so designated, or the ~~Secretary~~ issuing authority, shall rescind the stop-work  
13 order if all the violations for which the stop-work order are issued are corrected, no  
14 other violations have occurred, and all measures necessary to abate the violations have  
15 been taken. The ~~Secretary~~ issuing authority shall rescind a stop-work order that is issued  
16 in error.

17 (f) The issuance of a stop-work order shall be a final agency decision subject to  
18 judicial review in the same manner as an order in a contested case pursuant to Article 4  
19 of Chapter 150B of the General Statutes. The petition for judicial review shall be filed  
20 in the superior court of the county in which the land-disturbing activity is being  
21 conducted.

22 (g) As used in this section, days are computed as provided in G.S. 1A-1, Rule 6.  
23 Except as otherwise provided, the Secretary may delegate any power or duty under this  
24 section to the Director of the Division of Land Resources of the Department or to any  
25 person who has supervisory authority over the Director. The Director may delegate any  
26 power or duty so delegated only to a person who is designated as acting Director. A  
27 local government that has established and administers an erosion and sedimentation  
28 control program approved under G.S. 113A-60 may delegate any power or duty under  
29 this section to the head of its agency responsible for enforcement of the local  
30 sedimentation and erosion control program.

31 (h) The Attorney General shall file a cause of action to abate the violations which  
32 resulted in the issuance of a stop-work order within two business days of the service of  
33 the stop-work order. The cause of action shall include a motion for an ex parte  
34 temporary restraining order to abate the violation and to effect necessary remedial  
35 measures. The resident superior court judge, or any judge assigned to hear the motion  
36 for the temporary restraining order, shall hear and determine the motion within two days  
37 of the filing of the complaint. The clerk of superior court shall accept complaints filed  
38 pursuant to this section without the payment of filing fees. Filing fees shall be paid to  
39 the clerk of superior court within 30 days of the filing of the complaint.

40 (i) The attorney for a local government authorized to issue a stopwork order may  
41 file a cause of action to abate the violations that resulted in the issuance of a stopwork  
42 order within two business days of the service of the stopwork order. The cause of action  
43 shall include a motion for an ex parte temporary restraining order to abate the violation  
44 and to effect necessary remedial measures. The resident superior court judge, or any

1 judge assigned to hear the motion for the temporary restraining order, shall hear and  
2 determine the motion within two days of the filing of the complaint. The clerk of  
3 superior court shall accept complaints filed pursuant to this section without the payment  
4 of filing fees. Filing fees shall be paid to the clerk of superior court within 30 days of  
5 the filing of the complaint."

6 **SECTION 4.** This act becomes effective October 1, 2008.