

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

1

SENATE BILL 454*

Short Title: Sedimentation Stop-Work Orders.

(Public)

Sponsors: Senator Tally.

Referred to: Environment and Natural Resources.

April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF STOP-WORK ORDERS FOR VIOLATIONS OF THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-65.1. Stop-work orders.

(a) The Secretary or his designee may issue a stop-work order if he finds that a land-disturbing activity is being conducted in violation of this Article or of any rule adopted or order issued pursuant to this Article and if he finds that:

(1) Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent, or has caused severe damage to adjacent land or that such damage is imminent; or

(2) The land-disturbing activity is being conducted without an approved plan or in violation of an approved plan; and

(3) The violation is knowing and willful.

(b) The stop-work order shall be in writing and directed to the person responsible for the violation, and shall state that all work is to be stopped except work required to abate the violation, shall include the Secretary's findings made pursuant to subsection (a) of this section, and shall list the conditions under which work may be resumed. The Secretary shall determine whether the delivery of equipment and materials which does not contribute to the violation may continue while the stop-work order is in effect. The

1 sheriff of the county in which the land-disturbing activity is being conducted shall serve
2 the stop-work order on the person responsible for the violation and shall post the stop-
3 work order in a conspicuous place at the site. If the person responsible for the violation
4 resides in or has his or its principal place of business in another county, the sheriff of
5 that county shall serve the stop-work order on the person responsible for the violation,
6 and the sheriff of the county in which the land-disturbing activity is being conducted
7 shall post a copy of the stop-work order in a conspicuous place at the site. If the person
8 responsible for the violation does not reside in this State, the sheriff of the county where
9 the North Carolina agent designated for acceptance of service of process resides shall
10 serve the stop-work order on the agent, and the sheriff of the county in which the land-
11 disturbing activity is being conducted shall post a copy of the stop-work order in a
12 conspicuous place at the site.

13 (c) The person responsible for the violation may appeal the stop-work order by
14 filing written notice with the Secretary. Within 10 days from receipt of the notice of
15 appeal the Secretary shall conduct a hearing to review the issuance of the stop-work
16 order, and shall make a decision to maintain, modify, or withdraw the stop-work order.
17 The hearing held pursuant to this subsection shall not be considered a contested case
18 and shall not be subject to Article 3 of Chapter 150B of the General Statutes. At the
19 hearing before the Secretary, the person responsible for the violation shall be permitted
20 to submit relevant evidence. If no hearing is held or no decision is made within 10 days
21 after the date of receipt of the notice of appeal, the stop-work order is void. The
22 Secretary's decision shall be a final agency decision subject to judicial review in the
23 same manner as an order in a contested case pursuant to Article 4 of Chapter 150B of
24 the General Statutes.

25 (d) Pending a decision by the Secretary, no further work may take place other
26 than that provided in the stop-work order except as provided in subsection (b) of this
27 section. Notwithstanding any decision by the Secretary to modify or withdraw a stop-
28 work order, neither the State nor its officers or employees shall be liable for any loss
29 resulting from the issuance of a stop-work order pursuant to this section."

30 Sec. 2. G.S. 113A-64(a) reads as rewritten:

31 "(a) Civil Penalties.

32 (1) Any person who violates any of the provisions of this Article or any
33 ordinance, rule, or order adopted or issued pursuant to this Article by
34 the Commission or by a local government, or who initiates or
35 continues a land-disturbing activity for which an erosion control plan
36 is required except in accordance with the terms, conditions, and
37 provisions of an approved plan, shall be subject to a civil penalty of
38 not more than five hundred dollars (\$500.00), except that the penalty
39 for failure to submit an erosion control plan shall be as provided in
40 subdivision (4) of this ~~subsection~~ subsection and the penalty for
41 violating a stop-work order shall be as provided in subdivision (5) of
42 this subsection. No penalty shall be assessed until the person alleged
43 to be in violation has been notified of the violation. Each day of a
44 continuing violation shall constitute a separate violation.

- 1 (2) The Secretary, for violations under the Commission's jurisdiction, or
2 the governing body of any local government having jurisdiction, shall
3 determine the amount of the civil penalty to be assessed under ~~G.S.~~
4 ~~113A-64(a)~~ this subsection and shall make written demand for payment
5 upon the person responsible for the violation, and shall set forth in
6 detail the violation for which the penalty has been invoked. If
7 payment is not received or equitable settlement reached within 30 days
8 after demand for payment is made, the Secretary shall refer the matter
9 to the Attorney General for the institution of a civil action in the name
10 of the State in the superior court of the county in which the violation is
11 alleged to have occurred to recover the amount of the penalty, and
12 local governments shall refer such matters to their respective attorneys
13 for the institution of a civil action in the name of the local government
14 in the appropriate division of the General Court of Justice of the
15 county in which the violation is alleged to have occurred for recovery
16 of the penalty. Any sums recovered shall be used to carry out the
17 purposes and requirements of this Article.
- 18 (3) In determining the amount of the penalty, the Secretary shall consider
19 the degree and extent of harm caused by the violation, the cost of
20 rectifying the damage, the amount of money the violator saved by his
21 noncompliance, whether the violation was committed willfully, and
22 the prior record of the violator in complying or failing to comply with
23 this Article.
- 24 (4) Any person who fails to submit an erosion control plan for approval by
25 the Commission pursuant to G.S. 113A-54(d)(4) or by a local
26 government pursuant to G.S. 113A-61 shall be subject to a single,
27 noncontinuing civil penalty of not more than one thousand dollars
28 (\$1,000). Any penalty which is recovered pursuant to this subdivision
29 shall be deposited in the General Fund. Any person who is subject to a
30 civil penalty under this subdivision may be subject to additional civil
31 penalties for violation of any other provision of this Article or any
32 ordinance, rule, or order adopted or issued pursuant to this Article by
33 the Commission or a local government.
- 34 (5) Any person who violates a stop-work order issued pursuant to G.S.
35 113A-65.1 shall be subject to civil penalty of not more than five
36 thousand dollars (\$5,000). A penalty shall be assessed until the person
37 alleged to be in violation has been notified of the violation. Each day
38 of a continuing violation shall be a separate violation."

39 Sec. 3. This act is effective upon ratification.