

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE BILL 644*

Short Title: Improve Sedimentation Control.

(Public)

Sponsors: Representatives Colton; Hensley and Luebke.

Referred to: Environment.

March 29, 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(1) Repealed by Session Laws 1973, c. 1417, s. 1.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 cause or contribute to sedimentation. This Article shall not apply to the following land-disturbing activities:

- 1 a. Those undertaken on agricultural land for the production of
2 plants and animals useful to man, including but not limited to:
3 forages and sod crops, grains and feed crops, tobacco, cotton,
4 and peanuts; dairy animals and dairy products; poultry and
5 poultry products; livestock, including beef cattle, sheep, swine,
6 horses, ponies, mules or goats, including the breeding and
7 grazing of any or all such animals; bees and apiary products; fur
8 animals;
- 9 b. Those undertaken on forestland for the production and
10 harvesting of timber and timber products and which are
11 conducted in accordance with Forest Practice Guidelines
12 Related to Water Quality (best management practices) as
13 adopted by the Department; and
- 14 c. Activities undertaken by persons as defined in G.S. 113A-52(8)
15 who are otherwise regulated by the provisions of G.S. 74-46
16 through G.S. 74-68, the Mining Act of 1971.
- 17 (7) 'Local government' means any county, incorporated village, town, or
18 city, or any combination of counties, incorporated villages, towns, and
19 cities, acting through a joint program pursuant to the provisions of this
20 Article.
- 21 (7a) 'Parent' has the same meaning as set forth in 17 Code of Federal
22 Regulations § 240.12(b)-2 (1 April 1992 Edition).
- 23 (8) 'Person' means any individual, partnership, firm, association, joint
24 venture, public or private corporation, trust, estate, commission, board,
25 public or private institution, utility, cooperative, interstate body, or
26 other legal entity.
- 27 (9) 'Secretary' means the Secretary of Environment, Health, and Natural
28 Resources.
- 29 (10) 'Sediment' means solid particulate matter, both mineral and organic,
30 that has been or is being transported by water, air, gravity, or ice from
31 its site of origin.
- 32 (10a) 'Subsidiary' has the same meaning as set forth in 17 Code of Federal
33 Regulations § 240.12(b)-2 (1 April 1992 Edition).
- 34 ~~(10a)~~(10b) 'Tract' means all contiguous land and bodies of water being
35 disturbed or to be disturbed as a unit, regardless of ownership.
- 36 (11) 'Working days' means days exclusive of Saturday and Sunday during
37 which weather conditions or soil conditions permit land-disturbing
38 activity to be undertaken."
- 39 Sec. 2. G.S. 113A-54(d) reads as rewritten:
- 40 "(d) In implementing the erosion and sedimentation control program, the
41 Commission shall:
- 42 (1) Assist and encourage local governments in developing erosion and
43 sediment control programs and as part of such assistance to develop a
44 model local erosion control ordinance, and ordinance. Local

1 government ordinances shall at least meet and may exceed the
2 minimum requirements of this Article and rules adopted pursuant to
3 this Article. The Commission shall approve, approve as modified, or
4 disapprove local ~~plans~~ programs submitted to it pursuant to G.S. 113A-
5 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. The Commission may establish an expiration date for erosion control plans
37 approved under this Article.

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~~, approve
42 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. The Sedimentation Account shall
25 be a nonreverting account within the Department and shall be administered by the State
26 Treasurer. The Sedimentation Account shall be treated as a special trust fund and shall
27 be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-
28 69.3. Fees collected under this section shall be credited to the Account and shall be
29 applied to the costs of 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(b) reads as rewritten:

41 "(b) The Commission shall review each program submitted and within 90 days of
42 receipt thereof shall notify the local government submitting the program that it has been
43 approved, approved with modifications, or disapproved. The Commission shall only
44 approve a program upon determining that its standards equal or exceed those of the

1 ~~model local erosion control ordinance developed in accordance with G.S. 113A-54(d)(1). this~~
2 Article and rules adopted pursuant to this Article."

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

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

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

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

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

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

34 **"§ 113A-61.1. Periodic inspection of land-disturbing activity.**

35 With respect to approved plans for erosion control in connection with land-
36 disturbing activities, the approving authority, either the Commission or a local
37 government, shall provide for periodic inspection of the land-disturbing activity to
38 ensure compliance with the approved plan, and to determine whether the measures
39 required in the plan are effective in controlling erosion and sediment resulting from the
40 land-disturbing activities. Notice of such right of inspection shall be included in the
41 certificate of approval for the plan. If the approving authority determines that the
42 person engaged in the land-disturbing activities has failed to comply with the plan, the
43 authority shall immediately serve upon that person by registered ~~mail~~ or certified mail,
44 or by any means authorized by G.S. 1A-1, Rule 4, a notice to comply of violation. The

1 notice shall set forth the measures needed to come into compliance with the plan and
2 shall state the time within which such measures must be completed. If the person
3 engaged in the land-disturbing activities fails to comply within the time specified, he
4 shall be deemed in violation of this Article."

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

6 "(a) Civil Penalties. –

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

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

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

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

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

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

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

"§ 113A-65. Injunctive relief.

(a) Violation of State Program. – Whenever the Secretary has reasonable cause to believe that any person is violating or is threatening to violate the requirements of this ~~Article~~ Article, or has obstructed, hampered, or interfered with an authorized representative of the Commission while in the process of carrying out official duties, he may, either before or after the institution of any other action or proceeding authorized by this Article, institute a civil action for injunctive relief to restrain the ~~violation or violation, threatened violation, violation, or obstruction, hampering, or interference with~~

1 a representative of the Commission while in the process of carrying out official duties.
2 The action shall be brought in the superior court of the county in which the ~~violation or~~
3 ~~violation,~~ ~~violation-violation,~~ or obstruction, hampering, or interference is
4 occurring or about to occur, and shall be in the name of the State upon the relation of
5 the Secretary.

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

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

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