

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 644*

Committee Substitute Favorable 4/22/93

Committee Substitute #2 Favorable 5/6/93

Fourth Edition Engrossed 5/11/93

Senate Environment and Natural Resources Committee Substitute Adopted 6/29/94

Short Title: Improve Sedimentation Control.

(Public)

Sponsors:

Referred to: Rereferred to Finance.

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(1) Repealed by Session Laws 1973, c. 1417, s. 1.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 in 17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines 'affiliate' as a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

(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.

- 1 (5) 'Erosion' means the wearing away of land surface by the action of
2 wind, water, gravity, or any combination thereof.
- 3 (6) 'Land-disturbing activity' means any use of the land by any person in
4 residential, industrial, educational, institutional or commercial
5 development, highway and road construction and maintenance that
6 results in a change in the natural cover or topography and that may
7 cause or contribute to sedimentation. ~~This Article shall not apply to the~~
8 ~~following land-disturbing activities:~~
- 9 a. ~~Those undertaken on agricultural land for the production of~~
10 ~~plants and animals useful to man, including but not limited to:~~
11 ~~forages and sod crops, grains and feed crops, tobacco, cotton,~~
12 ~~and peanuts; dairy animals and dairy products; poultry and~~
13 ~~poultry products; livestock, including beef cattle, sheep, swine,~~
14 ~~horses, ponies, mules or goats, including the breeding and~~
15 ~~grazing of any or all such animals; bees and apiary products; fur~~
16 ~~animals;~~
- 17 b. ~~Those undertaken on forestland for the production and~~
18 ~~harvesting of timber and timber products and which are~~
19 ~~conducted in accordance with Forest Practice Guidelines~~
20 ~~Related to Water Quality (best management practices) as~~
21 ~~adopted by the Department; and~~
- 22 e. ~~Activities undertaken by persons as defined in G.S. 113A-52(8)~~
23 ~~who are otherwise regulated by the provisions of G.S. 74-46~~
24 ~~through G.S. 74-68, the Mining Act of 1971.~~
- 25 (7) 'Local government' means any county, incorporated village, town, or
26 city, or any combination of counties, incorporated villages, towns, and
27 cities, acting through a joint program pursuant to the provisions of this
28 Article.
- 29 (7a) 'Parent' has the same meaning as in 17 Code of Federal Regulations §
30 240.12(b)-2 (1 June 1993 Edition), which defines 'parent' as an affiliate
31 that directly, or indirectly through one or more intermediaries, controls
32 another person.
- 33 (8) 'Person' means any individual, partnership, firm, association, joint
34 venture, public or private corporation, trust, estate, commission, board,
35 public or private institution, utility, cooperative, interstate body, or
36 other legal entity.
- 37 (9) 'Secretary' means the Secretary of Environment, Health, and Natural
38 Resources.
- 39 (10) 'Sediment' means solid particulate matter, both mineral and organic,
40 that has been or is being transported by water, air, gravity, or ice from
41 its site of origin.
- 42 (10a) 'Subsidiary' has the same meaning as in 17 Code of Federal
43 Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines

1 'subsidiary' as an affiliate that is directly, or indirectly through one
 2 or more intermediaries, controlled by another person.

3 ~~(10a)~~(10b) 'Tract' means all contiguous land and bodies of water being
 4 disturbed or to be disturbed as a unit, regardless of ownership.

5 (11) 'Working days' means days exclusive of Saturday and Sunday during
 6 which weather conditions or soil conditions permit land-disturbing
 7 activity to be undertaken."

8 Sec. 2. Article 4 of Chapter 113A of the General Statutes is amended by
 9 adding a new section to read:

10 **"§ 113A-52.01. Applicability of this Article.**

11 This Article shall not apply to the following land-disturbing activities:

12 (1) Activities, including the breeding and grazing of livestock, undertaken
 13 on agricultural land for the production of plants and animals useful to
 14 man, including, but not limited to:

15 a. Forages and sod crops, grains and feed crops, tobacco, cotton,
 16 and peanuts.

17 b. Dairy animals and dairy products.

18 c. Poultry and poultry products.

19 d. Livestock, including beef cattle, sheep, swine, horses, ponies,
 20 mules, and goats.

21 e. Bees and apiary products.

22 f. Fur producing animals.

23 (2) Activities undertaken on forestland for the production and harvesting
 24 of timber and timber products and conducted in accordance with best
 25 management practices set out in Forest Practice Guidelines Related to
 26 Water Quality, as adopted by the Department.

27 (3) Activities for which a permit is required under the Mining Act of 1971,
 28 Article 7 of Chapter 74 of the General Statutes.

29 (4) For the duration of an emergency, activities essential to protect human
 30 life."

31 Sec. 3. G.S. 113A-54(d) reads as rewritten:

32 "(d) In implementing the erosion and sedimentation control program, the
 33 Commission shall:

34 (1) Assist and encourage local governments in developing erosion and
 35 sediment control programs ~~and as part of such assistance to and, as a part~~
 36 ~~of this assistance, the Commission shall develop a model local erosion~~
 37 ~~control ordinance, and ordinance. The Commission shall approve,~~
 38 approve as modified, or disapprove local ~~plans~~ programs submitted to
 39 it pursuant to G.S. ~~113A-60; 113A-60.~~

40 (2) Assist and encourage other State agencies in developing erosion and
 41 sedimentation control programs to be administered in their ~~jurisdictions,~~
 42 ~~and to jurisdictions. The Commission shall approve, approve as~~
 43 modified, or disapprove ~~such~~ programs submitted pursuant to G.S.
 44 113A-56 and from time to time shall review such these programs for

1 compliance with ~~regulations issued~~ rules adopted by the Commission
2 and for adequate ~~enforcement~~; enforcement.

3 (3) Develop recommended methods of control of sedimentation and
4 prepare and make available for distribution publications and other
5 materials dealing with sedimentation control techniques appropriate
6 for use by persons engaged in land-disturbing activities, general
7 educational materials on erosion and sedimentation control, and
8 instructional materials for persons involved in the enforcement of this
9 Article and erosion control regulations, rules, ordinances, regulations,
10 and plans; ~~plans~~.

11 (4) Require submission of erosion control plans by those responsible for
12 initiating land-disturbing activities for approval prior to
13 commencement of the activities."

14 Sec. 4. G.S. 113A-54.1 reads as rewritten:

15 **"§ 113A-54.1. Approval of erosion control plans.**

16 (a) A draft erosion control plan must contain the applicant's address and, if the
17 applicant is not a resident of North Carolina, designate a North Carolina agent for the
18 purpose of receiving notice from the Commission or the Secretary of compliance or
19 noncompliance with the plan, this Article, or any rules adopted pursuant to this Article.
20 The Commission ~~must either approve or shall approve, approve with modifications, or~~
21 ~~disapprove~~ a draft erosion control plan for those land-disturbing activities for which
22 prior plan approval is required within 30 days of receipt. Failure to ~~approve~~ approve,
23 approve with modifications, or disapprove a completed draft erosion control plan within
24 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves
25 a draft erosion control plan, it must state in writing the specific reasons that the plan was
26 disapproved. Failure to ~~approve~~ approve, approve with modifications, or disapprove a
27 revised erosion control plan within 15 days of receipt shall be deemed approval of the
28 plan. The Commission may establish an expiration date for erosion control plans
29 approved under this Article.

30 (b) If, following commencement of a land-disturbing activity pursuant to an
31 approved erosion control plan, the Commission determines that the plan is inadequate to
32 meet the requirements of this Article, the Commission may require ~~such revisions~~ any
33 revision of the plan ~~as are~~ that is necessary to comply with this Article. Failure to
34 ~~approve~~ approve, approve with modifications, or disapprove a revised erosion control
35 plan within 15 days of receipt shall be deemed approval of the plan.

36 (c) The Director of the Division of Land Resources may disapprove an erosion
37 control plan upon finding that an ~~applicant, or any parent or subsidiary corporation if the~~
38 ~~applicant is a corporation:~~ applicant or a parent, subsidiary, or other affiliate of the
39 applicant:

40 (1) Is conducting or has conducted land-disturbing activity without an
41 approved plan, or has received notice of violation of a plan previously
42 approved by the Commission or a local government pursuant to this
43 Article and has not complied with the notice within the time specified
44 in the notice;

- 1 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a
2 local ordinance adopted pursuant to this Article ~~which is due and for~~
3 ~~which no appeal is pending;~~ by the time the payment is due;
4 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or
5 any criminal provision of a local ordinance adopted pursuant to this
6 Article; or
7 (4) Has failed to substantially comply with State rules or local ordinances
8 and regulations adopted pursuant to this Article.

9 (d) In the event that an erosion control plan is disapproved by the Director
10 pursuant to subsection (c) of this section, the Director shall state in writing the specific
11 reasons that the plan was disapproved. The applicant may appeal the Director's
12 disapproval of the plan to the Commission. For purposes of this subsection and
13 subsection (c) of this section, an applicant's record may be considered for only the two
14 years prior to the application date."

15 Sec. 5. G.S. 113A-54.2(b) reads as rewritten:

16 "(b) The Sedimentation Account is established as a nonreverting account within
17 the Department. Fees collected under this section shall be credited to the Account and
18 shall be applied to the costs of administering this Article."

19 Sec. 6. G.S. 113A-55 reads as rewritten:

20 "**§ 113A-55. Authority of the Secretary.**

21 The sedimentation control program developed by the Commission shall be
22 administered by the Secretary under the direction of the Commission. To this end the
23 Secretary ~~is authorized and directed to employ, with the approval of the Commission, shall~~
24 employ the necessary clerical, technical, and administrative personnel, and ~~to~~ assign
25 tasks to the various divisions of the Department for the purpose of implementing this
26 Article. The Secretary ~~is authorized to~~ may bring enforcement actions pursuant to G.S.
27 113A-64 and 113A-65. The Secretary shall make final agency decisions in contested
28 cases that arise from civil penalty assessments pursuant to G.S. 113A-64."

29 Sec. 7. G.S. 113A-60 reads as rewritten:

30 "**§ 113A-60. Local erosion control programs.**

31 (a) Any local government may submit to the Commission for its approval an
32 erosion and sediment control program for its jurisdiction, and to this end local
33 governments are authorized to adopt ~~ordinances, rules~~ ordinances and regulations
34 necessary to establish and enforce ~~such erosion and sediment control programs, and they~~
35 programs. Local governments are authorized to create or designate agencies or
36 subdivisions of local government to administer and enforce the programs. An ordinance
37 adopted by a local government shall at least meet and may exceed the minimum
38 requirements of this Article and the rules adopted pursuant to this Article. Two or more
39 units of local government are authorized to establish a joint program and to enter into
40 ~~such any~~ agreements as that are necessary for the proper administration and enforcement
41 of ~~such the~~ program. The resolutions establishing any joint program must be duly
42 recorded in the minutes of the governing body of each unit of local government
43 participating in the program, and a certified copy of each resolution must be filed with
44 the Commission.

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

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

14 Sec. 8. G.S. 113A-61(a) reads as rewritten:

15 "(a) ~~Each local government's erosion and sediment control program shall require that for~~
16 For those land-disturbing activities requiring for which prior approval of an erosion
17 control plan, such plan shall be submitted plan is required, the Commission may require
18 that a local government that administers an erosion and sediment control program
19 approved under G.S. 113A-60 require the applicant to submit a copy of the erosion
20 control plan to the appropriate soil and water conservation district or districts at the
21 same time it is submitted the applicant submits the erosion control plan to the local
22 government for approval. The soil and water conservation district or districts, within 20
23 days after receipt of the proposed plan, or within such additional time as may be prescribed by
24 the local government, districts shall review the plan and submit its any comments and
25 recommendations to the local government within 20 days after the soil and
26 water conservation district received the erosion control plan or within any shorter period
27 of time as may be agreed upon by the soil and water conservation district and the local
28 government. Failure of the a soil and water conservation district to submit its comments
29 and recommendations within 20 days or within the prescribed additional agreed upon
30 shorter period of time shall not delay final action on the proposed plan by the local
31 government."

32 Sec. 9. G.S. 113A-61(b1) reads as rewritten:

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

36 (1) Is conducting or has conducted land-disturbing activity without an
37 approved plan, or has received notice of violation of a plan previously
38 approved by the Commission or a local government pursuant to this
39 Article and has not complied with the notice within the time specified
40 in the notice;

41 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a
42 local ordinance adopted pursuant to this Article ~~which is due and for~~
43 ~~which no appeal is pending;~~ by the time the payment is due;

- 1 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or
 2 any criminal provision of a local ordinance adopted pursuant to this
 3 Article; or
 4 (4) Has failed to substantially comply with State rules or local ordinances
 5 and regulations adopted pursuant to this Article."

6 Sec. 10. G.S. 113A-61.1 reads as rewritten:

7 "**§ 113A-61.1. ~~Periodic inspection~~ Inspection of land-disturbing activity. activity;**
 8 **notice of violation.**

9 (a) ~~With respect to approved plans for erosion control in connection with land-~~
 10 ~~disturbing activities, the approving authority, either The Commission or The~~
 11 ~~Commission, a local government, government that administers an erosion and sediment~~
 12 ~~control program approved under G.S. 113A-60, or other approving authority shall~~
 13 ~~provide for periodic inspection of the land-disturbing activity activities to ensure~~
 14 ~~compliance with the approved plan, this Article and to determine whether the measures~~
 15 ~~required in the an erosion control plan are effective in controlling erosion and sediment~~
 16 ~~resulting from the land-disturbing activities. activity. Notice of such this right of~~
 17 ~~inspection shall be included in the certificate of approval for the of each erosion control~~
 18 ~~plan.~~

19 (b) No person shall willfully resist, delay, or obstruct an authorized
 20 representative of the Commission, an authorized representative of a local government,
 21 or an employee or an agent of the Department while the representative, employee, or
 22 agent is inspecting or attempting to inspect a land-disturbing activity under this section.

23 (c) If the Secretary, a local government that administers an erosion and sediment
 24 control program approved under G.S. 113A-60, or other approving authority determines
 25 that the person engaged in the land-disturbing activities activity has failed to comply
 26 with the plan, this Article, the Secretary, local government, or other approving authority
 27 shall immediately serve a notice of violation upon that person by registered mail a notice
 28 to comply. The notice person. The notice may be served by any means authorized under
 29 G.S. 1A-1, Rule 4. A notice of violation shall specify a date by which the person must
 30 comply with this Article and inform the person of the actions that need to be taken to
 31 comply with this Article. shall set forth the measures needed to come into compliance with
 32 the plan and shall state the time within which such measures must be completed. If the Any
 33 person engaged in the land-disturbing activities who fails to comply within the time
 34 specified, he shall be specified deemed in violation of this Article. is subject to the civil and
 35 criminal penalties provided in G.S. 113A-64."

36 Sec. 11. G.S. 113A-64(a) reads as rewritten:

37 "(a) Civil Penalties. –

- 38 (1) Any person who violates any of the provisions of this Article or any
 39 ordinance, rule, or order adopted or issued pursuant to this Article by
 40 the Commission or by a local government, or who initiates or
 41 continues a land-disturbing activity for which an erosion control plan
 42 is required except in accordance with the terms, conditions, and
 43 provisions of an approved plan, ~~shall be~~ is subject to a civil ~~penalty of~~
 44 ~~not more than~~ penalty. The maximum civil penalty for a violation,

1 other than a violation of a stop-work order issued under G.S. 113A-
2 65.1, is five hundred dollars (\$500.00), except that the penalty for failure
3 to submit an erosion control plan shall be as provided in subdivision (4) of
4 this subsection and the penalty for violating a stop-work order shall be as
5 provided in subdivision (5) of this subsection. (\$500.00). The maximum
6 civil penalty for a violation of a stop-work order is five thousand
7 dollars (\$5,000). No penalty shall be assessed until the person alleged
8 to be in violation has been notified of the violation. violation as
9 provided in G.S. 113A-61.1(b). A civil penalty may be assessed from
10 the date the notice of violation is served. Each day of a continuing
11 violation shall constitute a separate violation.

- 12 (2) ~~The Secretary, for violations under the Commission's jurisdiction, or~~
13 ~~the governing body of any local government having jurisdiction, shall~~
14 ~~determine the amount of the civil penalty to be assessed under this~~
15 ~~subsection and shall make written demand for payment upon the~~
16 ~~person responsible for the violation, and shall set forth in detail the~~
17 ~~violation for which the penalty has been invoked. If payment is not~~
18 ~~received or equitable settlement reached within 30 days after demand~~
19 ~~for payment is made, the Secretary shall refer the matter to the~~
20 ~~Attorney General for the institution of a civil action in the name of the~~
21 ~~State in the superior court of the county in which the violation is~~
22 ~~alleged to have occurred to recover the amount of the penalty. Local~~
23 ~~governments shall refer such matters to their respective attorneys for~~
24 ~~the institution of a civil action in the name of the local government in~~
25 ~~the appropriate division of the General Court of Justice of the county~~
26 ~~in which the violation is alleged to have occurred for recovery of the~~
27 ~~penalty. The Secretary or a local government that administers an~~
28 ~~erosion and sediment control program approved under G.S. 113A-60~~
29 ~~shall determine the amount of the civil penalty and shall notify the~~
30 ~~person who is assessed the civil penalty of the amount of the penalty~~
31 ~~and the reason for assessing the penalty. The notice of assessment~~
32 ~~shall be served by any means authorized under G.S. 1A-1, Rule 4, and~~
33 ~~shall direct the violator to either pay the assessment or contest the~~
34 ~~assessment within 30 days by filing a petition for a contested case~~
35 ~~under Article 3 of Chapter 150B of the General Statutes. If a violator~~
36 ~~does not pay a civil penalty assessed by the Secretary within 30 days~~
37 ~~after it is due, the Department shall request the Attorney General to~~
38 ~~institute a civil action to recover the amount of the assessment. If a~~
39 ~~violator does not pay a civil penalty assessed by a local government~~
40 ~~within 30 days after it is due, the local government may institute a civil~~
41 ~~action to recover the amount of the assessment. The civil action may~~
42 ~~be brought in the superior court of any county where the violation~~
43 ~~occurred or the violator's residence or principal place of business is~~
44 ~~located. Such A civil actions-action must be filed within three years of~~

1 the date the final agency decision was served on the violator.
 2 assessment was due. An assessment that is not contested is due when
 3 the violator is served with a notice of assessment. An assessment that
 4 is contested is due at the conclusion of the administrative and judicial
 5 review of the assessment. Any sums recovered shall be used to carry
 6 out the purposes and requirements of this Article.

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

13 (4) ~~Any person who fails to submit an erosion control plan for approval by~~
 14 ~~the Commission pursuant to G.S. 113A-54(d)(4) or by a local~~
 15 ~~government pursuant to G.S. 113A-61 shall be subject to a single,~~
 16 ~~noncontinuing civil penalty of not more than one thousand dollars~~
 17 ~~(\$1,000). Any penalty which is recovered pursuant to this subdivision~~
 18 ~~shall be deposited in the General Fund. Any person who is subject to a~~
 19 ~~civil penalty under this subdivision may be subject to additional civil~~
 20 ~~penalties for violation of any other provision of this Article or any~~
 21 ~~ordinance, rule, or order adopted or issued pursuant to this Article by~~
 22 ~~the Commission or a local government.~~

23 (5) ~~Any person who violates a stop work order issued pursuant to G.S.~~
 24 ~~113A-65.1 shall be subject to a civil penalty of not more than five~~
 25 ~~thousand dollars (\$5,000). No penalty shall be assessed until the~~
 26 ~~person alleged to be in violation has been notified of the violation.~~
 27 ~~Each day of a continuing violation shall be a separate violation. Civil~~
 28 ~~penalties collected by the Department or other State agency under this~~
 29 ~~subsection shall be credited to the General Fund as nontax revenue.~~
 30 ~~Civil penalties collected by a local government under this subsection~~
 31 ~~shall be credited to the general fund of the local government as nontax~~
 32 ~~revenue."~~

33 Sec. 12. Article 4 of Chapter 113A of the General Statutes is amended by
 34 adding a new section to read:

35 "**§ 113A-64.1. Restoration of areas affected by failure to comply.**

36 The Secretary or a local government that administers a local erosion and sediment
 37 control program approved under G.S. 113A-60 may require a person who engaged in a
 38 land-disturbing activity and failed to retain sediment generated by the activity, as
 39 required by G.S. 113A-57(3), to restore the waters and land affected by the failure so as
 40 to minimize the detrimental effects of the resulting pollution by sedimentation. This
 41 authority is in addition to any other civil or criminal penalty or injunctive relief
 42 authorized under this Article."

43 Sec. 13. G.S. 113A-65(c) reads as rewritten:

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

8 Sec. 14. Section 5 of this act becomes effective 1 July 1994. All other
9 sections of this act become effective 1 October 1994, except that G.S. 113A-64(a)(5), as
10 amended by Section 11 of this act, becomes effective 1 July 1995.