

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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BILL DRAFT 2007-RIz-21 [v.3] (05/14)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: Sedimentation Ctrl/Local Gov't Enforcement.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCESS FOR APPEALS FROM CIVIL PENALTIES
ASSESSED BY A LOCAL GOVERNMENT THAT HAS ESTABLISHED AND
ADMINISTERS AN EROSION AND SEDIMENTATION CONTROL PROGRAM
APPROVED UNDER G.S. 113A-60, AND TO PROVIDE THAT LOCAL
GOVERNMENTS WITH APPROVED PROGRAMS MAY ISSUE STOP WORK
ORDERS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
COMMISSION.

The General Assembly of North Carolina enacts:

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

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

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

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

"§ 113A-64. Penalties.

(a) Civil Penalties. –

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

terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

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

(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 noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this Article.

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

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

- (6) (a) Where a local government has established and administers an erosion and sedimentation control program approved under G.S. 113A-60, the local government, or its designee, shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty.
- (b) The issuance of a notice of violation and the assessment of a civil penalty by a local government shall entitle the violator to a quasi-judicial hearing contesting the issuance of the notice of violation and/or the assessment of the civil penalty. The notice of assessment shall be served on the violator by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment within 60 days by filing a demand for hearing with the local government as directed by its adopted procedures.
- (c) Review of the notice of violation and the assessment of a civil penalty shall be conducted pursuant to procedures adopted by the local government. If the local government has no adopted procedures, review shall be conducted under Articles 3 and 4 of Chapter 150B of the General Statutes. The demand for hearing by the local government shall be accompanied by such fees as established by the local government's adopted procedures. The local government, or its delegate, shall make the final agency decisions in contested cases arising from civil penalties assessed by the local government. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal the assessment of the civil penalty.
- (d) Every decision of the local government under local government procedures shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the local government, or its delegate, is delivered to the violator. The decision of the local government may be delivered to the violator either by personal service or by registered mail or certified mail return receipt requested.
- (e) If a violator does not pay a civil penalty assessed by a local government within 30 days after it is due, the local government may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

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

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

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

(a) The Secretary 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, that the violation is knowing and willful, and that either:

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

(a1) A local government that has established and administers an erosion and sedimentation control program approved under G.S. 113A-60 may issue a stop-work order if the local government 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, that the violation is knowing and willful, and that either:

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

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

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

1 the stop-work order to any person that the ~~Department~~issuing authority has reason to
2 believe may be responsible for the violation.

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

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

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

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

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

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

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

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