

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 1000
HOUSE BILL 1171

AN ACT TO IMPROVE ADMINISTRATION OF THE SEDIMENTATION
POLLUTION CONTROL ACT OF 1973.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-357 reads as rewritten:

"§ 153A-357. **Permits.**—(a) No person may commence or proceed with:

- (1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building;
- (2) The installation, extension, or general repair of any plumbing system;
- (3) The installation, extension, alteration, or general repair of any heating or cooling equipment system; or
- (4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment

without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single-family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section constitutes a misdemeanor.

(b) No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity."

Sec. 2. G.S. 160A-417 reads as rewritten:

"§ 160A-417. **Permits.**—(a) No person shall commence or proceed with:

- (1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure,
- (2) The installation, extension, or general repair of any plumbing system,
- (3) The installation, extension, alteration, or general repair of any heating or cooling equipment system, or
- (4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment,

without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute a misdemeanor.

(b) No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity."

Sec. 3. G.S. 113A-54(d)(4) reads as rewritten:

"(4) Require submission of erosion control plans by those responsible for initiating land-disturbing activities for approval prior to commencement of the activities. As to those activities requiring prior plan approval, the Commission must either approve or disapprove the plan within 30 days of receipt. The draft plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. Failure to approve or disapprove a complete erosion and sedimentation control plan within 30 days of receipt shall be deemed approval. Denial of a plan must specifically state in writing the reasons for denial. The Commission must approve or deny a revised plan within 15 days of receipt, or it is deemed to be approved.

If, following commencement of a land-disturbing activity pursuant to an approved plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require such revisions as are necessary to comply with this act. The Commission must approve or deny the revised plan within 15 days of receipt, or it is deemed to be approved."

Sec. 4. G.S. 113A-56(a) reads as rewritten:

"(a) The Commission shall have jurisdiction, to the exclusion of local governments, for the purpose of promulgating ~~regulations~~ rules concerning land-disturbing activities that are:

- (1) Conducted by the State;
- (2) Conducted by the United States;
- (3) Conducted by persons having the power of eminent domain;
- (4) Conducted by local governments; or
- ~~(5) Licensed by the State or the United States; or~~
- ~~(6)~~(5) Funded in whole or in part by the State or the United States."

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

"(a) Civil Penalties. –

- (1) Any person who violates any of the provisions of this Article or any ordinance, rule, ~~regulation~~, 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 control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty of not more than one hundred dollars (\$100.00), except that the penalty for failure to submit an erosion control plan shall be as provided in subdivision (3) of this subsection. 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 constitute a separate violation ~~under G.S. 113A-64(a)(1).~~
- (2) The Secretary, for violations under the Commission's jurisdiction, or the governing body of any local government having jurisdiction, shall determine the amount of the civil penalty to be assessed under G.S.

113A-64(a) and shall make written demand for payment upon the person responsible for the violation, and shall set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the Secretary shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the penalty, and 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 county in which the violation is alleged to have occurred for recovery of the penalty. Any sums recovered shall be used to carry out the purposes and requirements of this Article.

- (3) 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."

Sec. 6. G.S. 113A-66(a) reads as rewritten:

"(a) Any person injured by a violation of this Article or any ordinance, rule, ~~regulation,~~ or order duly adopted by the Secretary or a local government, or by the initiation or continuation of a land-disturbing activity for which an erosion control plan is required other than in accordance with the terms, conditions, and provisions of an approved plan, may bring a civil action against the person alleged to be in violation (including the State and any local government). The action may seek:

- (1) Injunctive relief;
- (2) An order enforcing the law, rule, ~~regulation,~~ ordinance, order, or erosion control plan violated; or
- (3) Damages caused by the violation; or
- (4) ~~Both damages and injunctive relief; or~~
- ~~(5)~~(4) Both damages and an enforcement order.

If the amount of actual damages as found by the court or jury in suits brought under this subsection is five ~~hundred thousand dollars (\$500.00)~~ (\$5,000) or less, the plaintiff shall be awarded ~~double the amount of actual damages; if the amount of actual damages as found by the court or jury is greater than five hundred dollars (\$500.00), the plaintiff shall receive damages in the amount so found.~~ costs of litigation including reasonable attorneys fees and expert witness fees."

Sec. 7. The Department of Natural Resources and Community Development shall study and report to the General Assembly by 1 October 1990, on the effect of the amendments to the Sedimentation Pollution Control Act of 1973 enacted by Sections 1 through 6 of this act and on the advisability of additional amendments to give the Department authority to: (i) collect plan approval fees, (ii) require performance bonds for land disturbing activities, (iii) issue stop work orders by field personnel, and (iv) increase civil penalties assessed for violation of provisions of Chapter 113A of the General Statutes.

Sec. 8. This act shall become effective 1 January 1989.

In the General Assembly read three times and ratified this the 28th day of June, 1988.