

GENERAL ASSEMBLY OF NORTH CAROLINA  
1993 SESSION

CHAPTER 776  
HOUSE BILL 644

AN ACT TO AMEND THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973 TO MAKE IT MORE EFFECTIVE AND TO AMEND THE DEFINITION OF "PUBLIC WATER SYSTEM" FOR PURPOSES OF THE NORTH CAROLINA DRINKING WATER ACT.

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- (1) Repealed by Session Laws 1973, c. 1417, s. 1.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.
- (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:~~
  - a. ~~Those undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to: forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and~~

- grazing of any or all such animals; bees and apiary products; fur animals;
- b. ~~Those undertaken on forestland for the production and harvesting of timber and timber products and which are conducted in accordance with Forest Practice Guidelines Related to Water Quality (best management practices) as adopted by the Department; and~~
- e. ~~Activities undertaken by persons as defined in G.S. 113A-52(8) who are otherwise regulated by the provisions of G.S. 74-46 through G.S. 74-68, the Mining Act of 1971.~~
- (7) 'Local government' means any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of this Article.
- (7a) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines 'parent' as an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- (8) 'Person' means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- (9) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.
- (10) 'Sediment' means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.
- (10a) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 June 1993 Edition), which defines 'subsidiary' as an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
- ~~(10a)~~(10b) 'Tract' means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
- (11) 'Working days' means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken."

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

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

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

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

- a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
  - b. Dairy animals and dairy products.
  - c. Poultry and poultry products.
  - d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats.
  - e. Bees and apiary products.
  - f. Fur producing animals.
- (2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department.
  - (3) Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
  - (4) For the duration of an emergency, activities essential to protect human life."

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

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

- (1) Assist and encourage local governments in developing erosion and sediment control programs ~~and as part of such assistance to and, as a part of this assistance, the Commission shall develop a model local erosion control ordinance, and ordinance.~~ The Commission shall approve, approve as modified, or disapprove local plans programs submitted to it pursuant to G.S. 113A-60; 113A-60.
- (2) Assist and encourage other State agencies in developing erosion and sedimentation control programs to be administered in their ~~jurisdictions, and to jurisdictions.~~ The Commission shall approve, approve as modified, or disapprove such programs submitted pursuant to G.S. 113A-56 and from time to time shall review such these programs for compliance with regulations issued rules adopted by the Commission and for adequate enforcement; enforcement.
- (3) Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques appropriate for use by persons engaged in land-disturbing activities, general educational materials on erosion and sedimentation control, and instructional materials for persons involved in the enforcement of this Article and erosion control regulations, rules, ordinances, regulations, and plans; plans.
- (4) Require submission of erosion control plans by those responsible for initiating land-disturbing activities for approval prior to commencement of the activities."

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

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

(a) A draft erosion control 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. The Commission ~~must either approve or shall approve, approve with modifications, or disapprove~~ a draft erosion control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. Failure to ~~approve approve, approve with modifications,~~ or disapprove a completed draft erosion control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to ~~approve approve, approve with modifications,~~ or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan. The Commission may establish an expiration date for erosion control plans approved under this Article.

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

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

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

(d) In the event that an erosion control plan is disapproved by the Director pursuant to subsection (c) of this section, the Director shall state in writing the specific reasons that the plan was disapproved. The applicant may appeal the Director's disapproval of the plan to the Commission. For purposes of this subsection and

subsection (c) of this section, an applicant's record may be considered for only the two years prior to the application date."

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

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

Sec. 6. 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 ~~is authorized and directed to employ, with the approval of the Commission,~~ shall employ the necessary clerical, technical, and administrative personnel, and ~~to~~ assign tasks to the various divisions of the Department for the purpose of implementing this Article. The Secretary ~~is authorized to may~~ bring enforcement actions pursuant to G.S. 113A-64 and 113A-65. The Secretary shall make final agency decisions in contested cases that arise from civil penalty assessments pursuant to G.S. 113A-64."

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

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

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

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

(c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sediment control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume enforcement

of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program."

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

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

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

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

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

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

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

(a) ~~With respect to approved plans for erosion control in connection with land-disturbing activities, the approving authority, either The Commission or The Commission, a local government,~~ government that administers an erosion and sediment

control program approved under G.S. 113A-60, or other approving authority shall provide for periodic inspection of the land-disturbing activity activities to ensure compliance with the approved plan, this Article and to determine whether the measures required in the an erosion control plan are effective in controlling erosion and sediment resulting from the land-disturbing activities activity. Notice of such this right of inspection shall be included in the certificate of approval for the of each erosion control plan.

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

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

Sec. 11. 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, 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 is subject to a civil penalty of not more than penalty. The maximum civil penalty for a violation, other than a violation of a stop-work order issued under G.S. 113A-65.1, is five hundred dollars (\$500.00), except that the penalty for failure to submit an erosion control plan shall be as provided in subdivision (4) of this subsection and the penalty for violating a stop-work order shall be as provided in subdivision (5) of this subsection. (\$500.00). The maximum civil penalty for a violation of a stop-work order is five thousand dollars (\$5,000). No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. violation as provided in G.S. 113A-61.1(b). A civil penalty

may be assessed from the date the notice of violation is served. Each day of a continuing violation shall constitute a separate violation.

- (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 this subsection 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. 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.—The Secretary or a local government that administers an erosion and sediment 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. Such A civil actions action must be filed within three years of the date the final agency decision was served on the violator. 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. 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. Civil penalties collected by the Department or other State agency under this subsection shall be credited to the General Fund as nontax revenue. Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue.~~

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

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

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

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

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

Sec. 14. G.S. 130A-313(10) reads as rewritten:

"(10) 'Public water system' means a system for the provision to the public of piped water for human consumption if the system serves 15 or more service connections or which regularly serves 25 or more individuals. ~~Two or more water systems that are adjacent and are owned or operated by the same supplier of water and that together serve 15 or more service connections or 25 or more persons is a public water system.~~—The term includes:

- a. Any collection, treatment, storage or distribution facility under control of the operator of the system and used primarily in connection with the system; and
- b. Any collection or pretreatment storage facility not under the control of the operator of the system which is used primarily in connection with the system.

A public water system is either a 'community water system' or a 'noncommunity water system' as follows:

- a. 'Community water system' means a public water system which serves 15 or more service connections or which regularly serves at least 25 year-round residents.
- b. 'Noncommunity water system' means a public water system which is not a community water system."

Sec. 15. G.S. 130A-315 is amended by adding the following subsection to read:

"(b2) Two or more water systems that are adjacent, that are owned or operated by the same supplier of water, that individually serve less than 15 service connections or less than 25 persons but that in combination serve 15 or more service connections or 25 or more persons, and that individually are not public water systems shall meet the standards applicable to public water systems for the following contaminants: coliform bacteria, nitrates, nitrites, lead, copper, and other inorganic chemicals for which testing and monitoring is required for public water systems on 1 July 1994. The standards applicable to these contaminants shall be enforced by the Commission as though the water systems to which this subsection applies were public water systems."

Sec. 16. Sections 5, 14, and 15 of this act become effective 1 July 1994. All other sections of this act become effective 1 October 1994, except that the amendment to G.S. 113A-64(a)(5) made by Section 11 of this act becomes effective 1 July 1995.

In the General Assembly read three times and ratified this the 17th day of July, 1994.

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Dennis A. Wicker  
President of the Senate

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Marie W. Colton  
Speaker Pro Tempore of the House of Representatives