

§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.

(a) Except as hereinafter provided before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or State-owned lakes, the party or parties desiring to do such shall first obtain a permit from the Department. Granting of the State permit shall not relieve any party from the necessity of obtaining a permit from the United States Army Corps of Engineers for work in navigable waters, if the same is required. The Department shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers.

(b) All applications for such permits shall include a plat of the areas in which the proposed work will take place, indicating the location, width, depth and length of any proposed channel, the disposal area, and a copy of the deed or other instrument under which the applicant claims title to the property adjoining the waters in question, (or any land covered by waters), tidelands, or marshlands, or if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title plus written permission from the owner to carry out the project on his land.

(c) In lieu of a deed or other instrument referred to in subsection (b) of this section, the agency authorized to issue such permits may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property.

(c1) The Coastal Resources Commission may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued. In developing these rules, the Commission shall consider all of the following:

- (1) The size of the development.
- (2) The impact of the development on areas of environmental concern.
- (3) How often the class of development is carried out.
- (4) The need for on-site oversight of the development.
- (5) The need for public review and comment on individual development projects.

(c2) General permits may be issued by the Commission as rules under the provisions of G.S. 113A-118.1. Individual development carried out under the provisions of general permits shall not be subject to the mandatory notice provisions of this section. The Commission may impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues. The variance, appeals, and enforcement provisions of this Article shall apply to any individual development projects undertaken under a general permit.

(d) An applicant for a permit, other than an emergency permit, shall notify the owner of each tract of riparian property that adjoins that of the applicant. An applicant may satisfy the required notification of adjoining riparian property owners by either (i) obtaining from each adjoining riparian property owner a signed statement that the adjoining riparian property owner has no objection to the proposed project or (ii) providing a copy of the applicant's permit application to each adjoining riparian property owner by certified mail. If the owner's address is unknown and cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made to serve the copy by certified mail, publication in accordance with the rules of the Commission shall serve to satisfy the notification requirement. An owner may file written objections to the permit with the Department for 30 days after the owner is served with a copy of the application by certified mail. In the case of a special emergency dredge or fill permit the applicant must certify that the applicant took all reasonable steps to notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the Secretary shall issue or deny the permit within the time period specified in subsection (e) of this section, upon the express understanding from the applicant that the applicant will be entirely liable and hold the State

harmless for all damage to adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given.

(e) Applications for permits except special emergency permit applications shall be circulated by the Department among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. Permits may allow for projects granted a permit the right to maintain such project for a period of up to 10 years. The right to maintain such project shall be granted subject to such conditions as may be reasonably necessary to protect the public interest. The Coastal Resources Commission shall coordinate the issuance of permits under this section and G.S. 113A-118 and the granting of variances under this section and G.S. 113A-120.1 to avoid duplication and to create a single, expedited permitting process. The Coastal Resources Commission may adopt rules interpreting and applying the provisions of this section and rules specifying the procedures for obtaining a permit under this section. Maintenance work as defined in this subsection shall be limited to such activities as are required to maintain the project dimensions as found in the permit granted. The Department shall act on an application for permit within 75 days after the completed application is filed, provided the Department may extend such deadline by not more than an additional 75 days if necessary properly to consider the application, except for applications for a special emergency permit, in which case the Department shall act within two working days after an application is filed, and failure to so act shall automatically approve the application.

(e1) The Secretary is empowered to issue special emergency dredge or fill permits upon application. Emergency permits may be issued only when life or structural property is in imminent danger as a result of rapid recent erosion or sudden failure of a man-made structure. The Coastal Resources Commission may elaborate by rule upon what conditions the Secretary may issue a special emergency dredge or fill permit. The Secretary may condition the emergency permit upon any reasonable conditions, consistent with the emergency situation, he feels are necessary to reasonably protect the public interest. Where an application for a special emergency permit includes work beyond which the Secretary, in his discretion, feels necessary to reduce imminent dangers to life or property he shall issue the emergency permit only for that part of the proposed work necessary to reasonably reduce the imminent danger. All further work must be applied for by application for an ordinary dredge or fill permit. The Secretary shall deny an application for a special dredge or fill permit upon a finding that the detriment to the public which would occur on issuance of the permit measured by the five factors in G.S. 113-229(e) clearly outweighs the detriment to the applicant if such permit application should be denied.

(f) A permit applicant who is dissatisfied with a decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a

petition for a contested case hearing only if the Coastal Resources Commission determines, in accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the issuance of a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of the permit.

(g) G.S. 113A-122 applies to an appeal of a permit decision under subsection (f).

(h) Repealed by Session Laws 1987, c. 827, s. 105.

(h1) Except as provided in subsection (h2) of this section, all construction and maintenance dredgings of beach-quality sand may be placed on the affected downdrift ocean beaches or, if placed elsewhere, an equivalent quality and quantity of sand from another location shall be placed on the downdrift ocean beaches.

(h2) Clean, beach quality material dredged from navigational channels within the active nearshore, beach or inlet shoal systems shall not be removed permanently from the active nearshore, beach or inlet shoal system. This dredged material shall be disposed of on the ocean beach or shallow active nearshore area where it is environmentally acceptable and compatible with other uses of the beach.

(i) Subject to subsections (h1) and (h2) of this section, all materials excavated pursuant to such permit, regardless of where placed, shall be encased or entrapped in such a manner as to minimize their moving back into the affected water.

(j) None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States.

(k) Any person, firm, or corporation violating the provisions of this section shall be guilty of a Class 2 misdemeanor. Each day's continued operation after notice by the Department to cease shall constitute a separate offense. A notice to cease shall be served personally or by certified mail.

(l) The Secretary may, either before or after the institution of proceedings under subsection (k) of this section, institute a civil action in the superior court in the name of the State upon the relation of the Secretary, for damages, and injunctive relief, and for such other and further relief in the premises as said court may deem proper, to prevent or recover for any damage to any lands or property which the State holds in the public trust, and to restrain any violation of this section or of any provision of a dredging or filling permit issued under this section. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this section for any violation of the same.

(m) This section shall apply to all persons, firms, or corporations, their employees, agents, or contractors proposing excavation or filling work in the estuarine waters, tidelands, marshlands and State-owned lakes within the State, and the work to be performed by the State government or local governments. Provided, however, the provisions of this section shall not apply to the activities and functions of the Department and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130A-346 through G.S. 130A-349. Provided, further, this section shall not impair the riparian right of ingress and egress to navigable waters.

(n) Within the meaning of this section:

(1) "State-owned lakes" include man-made as well as natural lakes.

(2) "Estuarine waters" means all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing

waters and inland fishing waters agreed upon by the Department and the Wildlife Resources Commission, within the meaning of G.S. 113-129.

- (3) "Marshland" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tidewaters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which grow some, but not necessarily all, of the following salt marsh and marsh plant species: Smooth or salt water Cordgrass (*Spartina alterniflora*), Black Needlerush (*Juncus roemerianus*), Glasswort (*Salicornia* spp.), Salt Grass (*Distichlis spicata*), Sea Lavender (*Limonium* spp.), Bulrush (*Scirpus* spp.), Saw Grass (*Cladium jamaicense*), Cattail (*Typha* spp.), Salt-Meadow Grass (*Spartina patens*), and Salt Reed-Grass (*Spartina cynosuroides*). (1969, c. 791, s. 1; 1971, c. 1159, s. 6; 1973, c. 476, s. 128; c. 1262, ss. 28, 86; c. 1331, s. 3; 1975, c. 456, ss. 1-7; 1977, c. 771, s. 4; 1979, c. 253, ss. 1, 2; 1983, c. 258, ss. 1-3; c. 442, s. 2; 1987, c. 827, s. 105; 1989, c. 727, s. 107; 1993, c. 539, s. 844; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 777, s. 6(a), (b); 1995, c. 509, s. 55.1(a)-(c); 2000-172, ss. 3.1, 3.2; 2002-126, ss. 29.2(h)-(j); 2011-398, s. 36; 2013-413, s. 55.)