

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

H

2

HOUSE BILL 2506  
Committee Substitute Favorable 7/15/08

Short Title: Sedimentation Ctrl/Local Gov't Enforcement.

(Public)

---

Sponsors:

---

Referred to:

---

May 26, 2008

A BILL TO BE ENTITLED

1  
2 AN ACT TO CLARIFY THE PROCESS FOR APPEALS FROM CIVIL PENALTIES  
3 ASSESSED BY A LOCAL GOVERNMENT THAT HAS ESTABLISHED AND  
4 ADMINISTERS AN EROSION AND SEDIMENTATION CONTROL PROGRAM  
5 APPROVED UNDER G.S. 113A-60; TO PROVIDE THAT CIVIL PENALTIES  
6 ASSESSED BY A LOCAL GOVERNMENT PURSUANT TO THE  
7 SEDIMENTATION POLLUTION CONTROL ACT OF 1973 SHALL BE  
8 REMITTED TO THE CIVIL PENALTY AND FORFEITURE FUND; AND TO  
9 PROVIDE THAT LOCAL GOVERNMENTS WITH APPROVED PROGRAMS  
10 MAY ISSUE STOP-WORK ORDERS, AS RECOMMENDED BY THE  
11 ENVIRONMENTAL REVIEW COMMISSION.

12 The General Assembly of North Carolina enacts:

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

14 "**§ 113A-55. Authority of the Secretary.**

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

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

24 "**§ 113A-64. Penalties.**

25 (a) Civil Penalties. –

26 (1) Any person who violates any of the provisions of this Article or any  
27 ordinance, rule, or order adopted or issued pursuant to this Article by  
28 the Commission or by a local government, or who initiates or  
29 continues a land-disturbing activity for which an erosion and

1 sedimentation control plan is required except in accordance with the  
2 terms, conditions, and provisions of an approved plan, is subject to a  
3 civil penalty. The maximum civil penalty for a violation is five  
4 thousand dollars (\$5,000). A civil penalty may be assessed from the  
5 date of the violation. Each day of a continuing violation shall  
6 constitute a separate violation.

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

29 (3) In determining the amount of the penalty, the Secretary shall consider  
30 the degree and extent of harm caused by the violation, the cost of  
31 rectifying the damage, the amount of money the violator saved by  
32 noncompliance, whether the violation was committed willfully and the  
33 prior record of the violator in complying or failing to comply with this  
34 Article.

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

36 (5) ~~The clear proceeds of civil penalties collected by the Department or~~  
37 ~~Department, other State agency, or local government under this~~  
38 subsection shall be remitted to the Civil Penalty and Forfeiture Fund in  
39 accordance with G.S. 115C-457.2. ~~Civil penalties collected by a local~~  
40 ~~government under this subsection shall be credited to the general fund~~  
41 ~~of the local government as nontax revenue.~~

42 (6) a. Where a local government has established and administers an  
43 erosion and sedimentation control program approved under  
44 G.S. 113A-60, the local government, or its designee, shall

- 1 determine the amount of the civil penalty and shall notify the  
2 person who is assessed the civil penalty of the amount of the  
3 penalty and the reason for assessing the penalty.
- 4 b. The assessment of a civil penalty by a local government shall  
5 entitle the violator to a quasi-judicial hearing contesting the  
6 assessment of the civil penalty. The notice of assessment shall  
7 be served on the violator by any means authorized under  
8 G.S. 1A-1, Rule 4, and shall direct the violator to either pay the  
9 assessment or contest the assessment within 30 days by filing a  
10 demand for hearing with the local government pursuant to the  
11 procedures adopted by the local government, or if no  
12 procedures have been adopted, by filing a petition for a  
13 contested case under Articles 3 and 4 of Chapter 150B of the  
14 General Statutes.
- 15 c. Review of the assessment of a civil penalty shall be conducted  
16 pursuant to procedures within the local ordinances or  
17 regulations adopted to establish and enforce the erosion and  
18 sedimentation control program as approved by the Commission.  
19 The procedures shall provide for a quasi-judicial hearing from  
20 which a record of the hearing shall be created. If the local  
21 government has no adopted procedures, review shall be  
22 conducted under Articles 3 and 4 of Chapter 150B of the  
23 General Statutes. The petition for hearing shall be accompanied  
24 by such fees as established by the local government's adopted  
25 procedures. The local government, or its delegate, shall make  
26 the final agency decisions in contested cases arising from civil  
27 penalties assessed by the local government. Failure to timely  
28 file a petition and fee shall constitute a waiver of any rights to  
29 appeal the assessment of the civil penalty.
- 30 d. The final agency decision of the local government arising from  
31 a contested case shall be subject to review by the superior court  
32 by proceedings in the nature of certiorari. Any petition for  
33 review by the superior court shall be filed with the clerk of  
34 superior court within 30 days after the decision of the local  
35 government, or its delegate, is delivered to the violator. The  
36 decision of the local government may be delivered to the  
37 violator by any means authorized under G.S. 1A-1, Rule 4.
- 38 e. If a violator does not pay a civil penalty assessed by a local  
39 government within 30 days after it is due, the local government  
40 may institute a civil action to recover the amount of the  
41 assessment. The civil action may be brought in the courts of any  
42 county where the violation occurred or the violator's residence  
43 or principal place of business is located. A civil action must be  
44 filed within three years of the date the assessment was due. An

1                    assessment that is not contested is due when the violator is  
2                    served with a notice of assessment. An assessment that is  
3                    contested is due at the conclusion of the administrative and  
4                    judicial review of the assessment.

5                    f.                In determining the amount of the penalty, the local government  
6                    shall consider the degree and extent of harm caused by the  
7                    violation, the cost of rectifying the damage, the amount of  
8                    money the violator saved by noncompliance, whether the  
9                    violation was committed willfully, and the prior record of the  
10                   violator in complying or failing to comply with this Article, or  
11                   any ordinance, rule, or order adopted pursuant to this Article, by  
12                   the Commission, or by a local government.

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

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

21                "**§ 113A-65.1. Stop-work orders. orders issued by Secretary or local government.**

22                (a)            The Secretary may issue a stop-work order if he finds that a land-disturbing  
23                activity is being conducted in violation of this Article or of any rule adopted or order  
24                issued pursuant to this Article, that the violation is knowing and willful, and that either:

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

31                (a1)          A local government that has established and administers an erosion and  
32                sedimentation control program approved under G.S. 113A-60 may issue a stop-work  
33                order if the local government finds that a land-disturbing activity is being conducted in  
34                violation of this Article or any ordinance, rule, or order adopted or issued pursuant to  
35                this Article by the Commission or by a local government, that the violation is knowing  
36                and willful, and that either:

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

43                (b)            The stop-work order shall be in writing and shall state what work is to be  
44                stopped and what measures are required to abate the violation. The order shall include a

1 statement of the findings made by the Secretary or local government pursuant to  
2 ~~subsection (a)~~ subsection (a) or (a1) of this section, and shall list the conditions under  
3 which work that has been stopped by the order may be resumed. The delivery of  
4 equipment and materials which does not contribute to the violation may continue while  
5 the stop-work order is in effect. A copy of this section shall be attached to the order.

6 (c) The stop-work order shall be served by the sheriff of the county in which the  
7 land-disturbing activity is being conducted or by some other person duly authorized by  
8 law to serve process as provided by G.S. 1A-1, Rule 4, and shall be served on the  
9 person at the site of the land-disturbing activity who is in operational control of the  
10 land-disturbing activity. The sheriff or other person duly authorized by law to serve  
11 process shall post a copy of the stop-work order in a conspicuous place at the site of the  
12 land-disturbing activity. The Department or local government shall also deliver a copy  
13 of the stop-work order to any person that the Department or local government has  
14 reason to believe may be responsible for the violation.

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

20 (e) The Secretary or local government shall designate an employee of the  
21 Department or local government to monitor compliance with the stop-work order. The  
22 name of the employee so designated shall be included in the stop-work order. The  
23 employee so designated, or the ~~Secretary~~, Secretary or local government, shall rescind  
24 the stop-work order if all the violations for which the stop-work order are issued are  
25 corrected, no other violations have occurred, and all measures necessary to abate the  
26 violations have been taken. The Secretary or local government shall rescind a stop-work  
27 order that is issued in error.

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

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

42 (h) The Attorney General shall file a cause of action to abate the violations which  
43 resulted in the issuance of a stop-work order by the Secretary within two business days  
44 of the service of the stop-work order. The cause of action shall include a motion for an

1 ex parte temporary restraining order to abate the violation and to effect necessary  
2 remedial measures. The resident superior court judge, or any judge assigned to hear the  
3 motion for the temporary restraining order, shall hear and determine the motion within  
4 two days of the filing of the complaint. The clerk of superior court shall accept  
5 complaints filed pursuant to this section without the payment of filing fees. Filing fees  
6 shall be paid to the clerk of superior court within 30 days of the filing of the complaint.

7 (i) The attorney for a local government shall file a cause of action to abate the  
8 violations that resulted in the issuance of a stop-work order within two business days of  
9 the service of the stop-work order. The cause of action shall include a motion for an ex  
10 parte temporary restraining order to abate the violation and to effect necessary remedial  
11 measures. The resident superior court judge, or any judge assigned to hear the motion  
12 for the temporary restraining order, shall hear and determine the motion within two days  
13 of the filing of the complaint. The clerk of superior court shall accept complaints filed  
14 pursuant to this section without the payment of filing fees. Filing fees shall be paid to  
15 the clerk of superior court within 30 days of the filing of the complaint."

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