

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1261

Short Title: Erosion Control/Violation Notice.

(Public)

Sponsors: Representatives Colton, Payne, Nesbitt, N. Crawford, Greenwood, Hackney, B. Ethridge, Holt, Diamont, Jones, and Buchanan.

Referred to: Basic Resources.

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NOTICE REQUIRED FOR THE IMPOSITION OF A
CIVIL PENALTY AGAINST A PERSON IN VIOLATION OF THE
SEDIMENTATION POLLUTION CONTROL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-61(d) reads as rewritten:

"(d) With respect to approved plans for erosion control in connection with land-disturbing activities, the approving authority, either the Commission or a local government, shall provide for periodic inspections of the land-disturbing activity to insure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from the land-disturbing activities. Notice of such right of inspection shall be included in the certificate of approval for the plan. If the approving authority determines that the person engaged in the land-disturbing activities has failed to comply with the plan, the authority shall immediately serve upon that person by registered mail a notice to comply. The notice shall identify the violation committed under this Article, 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 person engaged in the land-disturbing activities fails to comply within the time specified, he shall be deemed in violation of this Article. plan, state the amount of the proposed civil penalty, and set forth the opportunity to appeal the proposed penalty as provided under this Article."

Sec. 2. G.S. 113A-64(a) reads as rewritten:

"(a) Civil Penalties.

- 1 (1) Any person who violates any of the provisions of this Article or any
2 ordinance, rule, or order adopted or issued pursuant to this Article by
3 the Commission or by a local government, or who initiates or
4 continues a land-disturbing activity for which an erosion control plan
5 is required except in accordance with the terms, conditions, and
6 provisions of an approved plan, shall be subject to a civil penalty of
7 not more than one hundred dollars (\$100.00), except that the penalty
8 for failure to submit an erosion control plan shall be as provided in
9 subdivision (3) of this subsection. ~~No penalty shall be assessed until the~~
10 ~~person alleged to be in violation has been notified of the violation.~~—Each
11 day of a continuing violation shall constitute a separate violation.
- 12 (2) The Secretary, for violations under the Commission's jurisdiction, or
13 the governing body of any local government having jurisdiction, shall
14 determine the amount of the civil penalty to be assessed under G.S.
15 113A-64(a) and shall make written demand for payment upon the
16 person responsible for the violation, and shall set forth in detail the
17 violation for which the penalty has been invoked. If payment is not
18 received or equitable settlement reached within 30 days after demand
19 for payment is made, the Secretary shall refer the matter to the
20 Attorney General for the institution of a civil action in the name of the
21 State in the superior court of the county in which the violation is
22 alleged to have occurred to recover the amount of the penalty, and
23 local governments shall refer such matters to their respective attorneys
24 for the institution of a civil action in the name of the local government
25 in the appropriate division of the General Court of Justice of the
26 county in which the violation is alleged to have occurred for recovery
27 of the penalty. Any sums recovered shall be used to carry out the
28 purposes and requirements of this Article.
- 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 his
32 noncompliance, whether the violation was committed willfully, and
33 the prior record of the violator in complying or failing to comply with
34 this Article.
- 35 (4) Any person who fails to submit an erosion control plan for approval by
36 the Commission pursuant to G.S. 113A-54(d)(4) or by a local
37 government pursuant to G.S. 113A-61 shall be subject to a single,
38 noncontinuing civil penalty of not more than one thousand dollars
39 (\$1,000). Any penalty which is recovered pursuant to this subdivision
40 shall be deposited in the General Fund. Any person who is subject to a
41 civil penalty under this subdivision may be subject to additional civil
42 penalties for violation of any other provision of this Article or any
43 ordinance, rule, or order adopted or issued pursuant to this Article by
44 the Commission or a local government."

1 Sec. 3. This act is effective upon ratification.