

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

2

HOUSE BILL 448*
Committee Substitute Favorable 5/2/91

Short Title: Sedimentation Stop-Work Orders.

(Public)

Sponsors:

Referred to:

April 1, 1991

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE THE ISSUANCE OF STOP-WORK ORDERS FOR
VIOLATIONS OF THE SEDIMENTATION POLLUTION CONTROL ACT OF
1973.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-65.1. Stop-work orders.

(a) The Director, Division of Land Resources of the Department may issue a stop-work order if he finds that a land-disturbing activity is being conducted in violation of this Article or of any rule adopted or order issued pursuant to this Article and if he finds that:

- (1) Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent, or has caused severe damage to adjacent land or that such damage is imminent and the violation is knowing and willful; or
- (2) The land-disturbing activity is being conducted without an approved plan and the violation is knowing and willful.

(b) The stop-work order issued pursuant to subsection (a) of this section may be issued for a period not to exceed five days.

(c) The stop-work order shall be in writing and directed to the person responsible for the violation. The order shall state which work is to be stopped and what measures are required to abate the violation. The order shall include the Director's findings made

1 pursuant to subsection (a) of this section, and shall list the conditions under which work
2 that has been stopped by the order may be resumed. The delivery of equipment and
3 materials which does not contribute to the violation may continue while the stop-work
4 order is in effect. The sheriff of the county in which the land-disturbing activity is
5 being conducted shall serve the stop-work order on the person responsible for the
6 violation and shall post the stop-work order in a conspicuous place at the site. If the
7 person responsible for the violation resides in or has his or its principal place of
8 business in another county, the sheriff of that county shall serve the stop-work order on
9 the person responsible for the violation, and the sheriff of the county in which the land-
10 disturbing activity is being conducted shall post a copy of the stop-work order in a
11 conspicuous place at the site. If the person responsible for the violation does not reside
12 in this State, the sheriff of the county where the North Carolina agent designated for
13 acceptance of service of process resides shall serve the stop-work order on the agent,
14 and the sheriff of the county in which the land-disturbing activity is being conducted
15 shall post a copy of the stop-work order in a conspicuous place at the site.

16 (d) The person responsible for the violation may appeal the stop-work order by
17 filing written notice with the Secretary. Within five (5) days from the issuance of the
18 stop-work order the Secretary may conduct a hearing to review the issuance of the stop-
19 work order, and may make a decision to maintain, modify, or withdraw the stop-work
20 order. The hearing held pursuant to this subsection shall not be considered a contested
21 case and shall not be subject to Article 3 of Chapter 150B of the General Statutes. At
22 the hearing before the Secretary, the person responsible for the violation shall be
23 permitted to submit relevant evidence. If no hearing is held or no decision is made
24 within five (5) days after the issuance of the stop-work order, the stop-work order is
25 void. The Secretary's decision shall be a final agency decision subject to judicial review
26 in the same manner as an order in a contested case pursuant to Article 4 of Chapter
27 150B of the General Statutes.

28 (e) Pending a decision by the Secretary, no further work may take place other
29 than that provided in the stop-work order except as provided in subsection (c) of this
30 section."

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

32 "(a) Civil Penalties.

33 (1) Any person who violates any of the provisions of this Article or any
34 ordinance, rule, or order adopted or issued pursuant to this Article by
35 the Commission or by a local government, or who initiates or
36 continues a land-disturbing activity for which an erosion control plan
37 is required except in accordance with the terms, conditions, and
38 provisions of an approved plan, shall be subject to a civil penalty of
39 not more than five hundred dollars (\$500.00), except that the penalty
40 for failure to submit an erosion control plan shall be as provided in
41 subdivision (4) of this ~~subsection~~ subsection and the penalty for
42 violating a stop-work order shall be as provided in subdivision (5) of
43 this subsection. No penalty shall be assessed until the person alleged

1 to be in violation has been notified of the violation. Each day of a
2 continuing violation shall constitute a separate violation.

3 (2) The Secretary, for violations under the Commission's jurisdiction, or
4 the governing body of any local government having jurisdiction, shall
5 determine the amount of the civil penalty to be assessed under ~~G.S.~~
6 ~~113A-64(a)~~ this subsection and shall make written demand for payment
7 upon the person responsible for the violation, and shall set forth in
8 detail the violation for which the penalty has been invoked. If
9 payment is not received or equitable settlement reached within 30 days
10 after demand for payment is made, the Secretary shall refer the matter
11 to the Attorney General for the institution of a civil action in the name
12 of the State in the superior court of the county in which the violation is
13 alleged to have occurred to recover the amount of the penalty, and
14 local governments shall refer such matters to their respective attorneys
15 for the institution of a civil action in the name of the local government
16 in the appropriate division of the General Court of Justice of the
17 county in which the violation is alleged to have occurred for recovery
18 of the penalty. Any sums recovered shall be used to carry out the
19 purposes and requirements of this Article.

20 (3) In determining the amount of the penalty, the Secretary shall consider
21 the degree and extent of harm caused by the violation, the cost of
22 rectifying the damage, the amount of money the violator saved by his
23 noncompliance, whether the violation was committed willfully, and
24 the prior record of the violator in complying or failing to comply with
25 this Article.

26 (4) Any person who fails to submit an erosion control plan for approval by
27 the Commission pursuant to G.S. 113A-54(d)(4) or by a local
28 government pursuant to G.S. 113A-61 shall be subject to a single,
29 noncontinuing civil penalty of not more than one thousand dollars
30 (\$1,000). Any penalty which is recovered pursuant to this subdivision
31 shall be deposited in the General Fund. Any person who is subject to a
32 civil penalty under this subdivision may be subject to additional civil
33 penalties for violation of any other provision of this Article or any
34 ordinance, rule, or order adopted or issued pursuant to this Article by
35 the Commission or a local government.

36 (5) Any person who violates a stop-work order issued pursuant to G.S.
37 113A-65.1 shall be subject to a civil penalty of not more than five
38 thousand dollars (\$5,000). No penalty shall be assessed until the
39 person alleged to be in violation has been notified of the violation.
40 Each day of a continuing violation shall be a separate violation."

41 Sec. 3. This act becomes effective October 1, 1991.