

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 448*

Committee Substitute Favorable 5/2/91

Senate Environment and Natural Resources Committee Substitute Adopted 6/18/91

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 Secretary 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, that the violation is knowing and willful, and that either:

(1) Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent.

(2) Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent.

(3) The land-disturbing activity is being conducted without an approved plan.

(b) The stop-work order shall be in writing and shall state what work is to be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by the Secretary pursuant to subsection (a) of this section, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials which does not

1 contribute to the violation may continue while the stop-work order is in effect. A copy
2 of this section shall be attached to the order.

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

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

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

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

29 (g) As used in this section, days are computed as provided in G.S. 1A-1, Rule 6.
30 Except as otherwise provided, the Secretary may delegate any power or duty under this
31 section to the Director of the Division of Land Resources of the Department or to any
32 person who has supervisory authority over the Director. The Director may delegate any
33 power or duty so delegated only to a person who is designated as acting Director.

34 (h) The Attorney General shall file a cause of action to abate the violations which
35 resulted in the issuance of a stop-work order within two days of the service of the stop-
36 work order. The cause of action shall include a motion for an **ex parte** temporary
37 restraining order to abate the violation and to effect necessary remedial measures. The
38 resident superior court judge, or any judge assigned to hear the motion for the
39 temporary restraining order, shall hear and determine the motion within two days of the
40 filing of the complaint. The clerk of superior court shall accept complaints filed
41 pursuant to this section without the payment of filing fees. Filing fees shall be paid to
42 the clerk of superior court within 30 days of the filing of the complaint."

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

44 "(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 five hundred dollars (\$500.00), except that the penalty
8 for failure to submit an erosion control plan shall be as provided in
9 subdivision (4) of this ~~subsection.~~ subsection and the penalty for
10 violating a stop-work order shall be as provided in subdivision (5) of
11 this subsection. No penalty shall be assessed until the person alleged
12 to be in violation has been notified of the violation. Each day of a
13 continuing violation shall constitute a separate violation.
- 14 (2) The Secretary, for violations under the Commission's jurisdiction, or
15 the governing body of any local government having jurisdiction, shall
16 determine the amount of the civil penalty to be assessed under ~~G.S.~~
17 ~~113A-64(a)~~ this subsection and shall make written demand for payment
18 upon the person responsible for the violation, and shall set forth in
19 detail the violation for which the penalty has been invoked. If
20 payment is not received or equitable settlement reached within 30 days
21 after demand for payment is made, the Secretary shall refer the matter
22 to the Attorney General for the institution of a civil action in the name
23 of the State in the superior court of the county in which the violation is
24 alleged to have occurred to recover the amount of the ~~penalty, and local~~
25 penalty. Local governments shall refer such matters to their respective
26 attorneys for the institution of a civil action in the name of the local
27 government in the appropriate division of the General Court of Justice
28 of the county in which the violation is alleged to have occurred for
29 recovery of the penalty. Any sums recovered shall be used to carry out
30 the purposes and requirements of this Article.
- 31 (3) In determining the amount of the penalty, the Secretary shall consider
32 the degree and extent of harm caused by the violation, the cost of
33 rectifying the damage, the amount of money the violator saved by his
34 noncompliance, whether the violation was committed willfully, and
35 the prior record of the violator in complying or failing to comply with
36 this Article.
- 37 (4) Any person who fails to submit an erosion control plan for approval by
38 the Commission pursuant to G.S. 113A-54(d)(4) or by a local
39 government pursuant to G.S. 113A-61 shall be subject to a single,
40 noncontinuing civil penalty of not more than one thousand dollars
41 (\$1,000). Any penalty which is recovered pursuant to this subdivision
42 shall be deposited in the General Fund. Any person who is subject to a
43 civil penalty under this subdivision may be subject to additional civil
44 penalties for violation of any other provision of this Article or any

1 ordinance, rule, or order adopted or issued pursuant to this Article by
2 the Commission or a local government.

3 (5) Any person who violates a stop-work order issued pursuant to G.S.
4 113A-65.1 shall be subject to a civil penalty of not more than five
5 thousand dollars (\$5,000). No penalty shall be assessed until the
6 person alleged to be in violation has been notified of the violation.
7 Each day of a continuing violation shall be a separate violation."

8 Sec. 3. This act becomes effective 1 October 1991.