

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

2

HOUSE BILL 94
Committee Substitute Favorable 5/9/13

Short Title: Amend Environmental Laws 2013.

(Public)

Sponsors:

Referred to:

February 13, 2013

A BILL TO BE ENTITLED

1 AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES
2 LAWS TO (1) CLARIFY THAT EXTENDED DURATION PERMITS FOR SANITARY
3 LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE
4 PERMITS FOR OPERATION AS WELL AS CONSTRUCTION; (2) CLARIFY THE
5 PROCESS FOR APPEALS FROM CIVIL PENALTIES ASSESSED BY A LOCAL
6 GOVERNMENT THAT HAS ESTABLISHED AND ADMINISTERS AN EROSION
7 AND SEDIMENTATION CONTROL PROGRAM APPROVED UNDER G.S. 113A-60
8 AND PROVIDE THAT CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT
9 PURSUANT TO THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973
10 SHALL BE REMITTED TO THE CIVIL PENALTY AND FORFEITURE FUND; (3)
11 REPEAL THE REQUIREMENT FOR AIR POLLUTION PERMIT HOLDERS TO
12 SUBMIT A WRITTEN DESCRIPTION OF PLANS TO REDUCE EMISSIONS OF AIR
13 CONTAMINANTS BY SOURCE REDUCTION OR RECYCLING; (4) ADD A FACTOR
14 FOR CONSIDERATION IN ASSESSING SOLID WASTE PENALTIES; (5) CLARIFY
15 THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT REQUIRED TO
16 PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020; AND (6)
17 DIRECT THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES TO
18 PROVIDE FOR NOTICE OF KNOWN CONTAMINATION TO APPLICANTS WHO
19 SEEK TO CONSTRUCT NEW PRIVATE DRINKING WATER WELLS.
20

21 The General Assembly of North Carolina enacts:

22
23 **PART I. CLARIFY THAT EXTENDED-DURATION PERMITS FOR SANITARY**
24 **LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE**
25 **PERMITS FOR OPERATION AS WELL AS CONSTRUCTION**

26 **SECTION 1.** Section 15.1 of S.L. 2012-187 reads as rewritten:

27 "SECTION 15.1. No later than July 1, 2013, the Commission for Public Health shall adopt
28 rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct
29 and operate a five-year phase of landfill development and apply to amend the permit to
30 construct and operate subsequent five-year phases of landfill development; or (ii) apply for a
31 permit to construct and operate a 10-year phase of landfill development and apply to amend the
32 permit to construct and operate subsequent 10-year phases of landfill development, with a
33 limited review of the permit five years after issuance of the initial permit and five years after
34 issuance of each amendment for subsequent phases of development. No later than July 1, 2013,
35 the Commission shall also adopt rules to allow applicants for permits for transfer stations the
36 option to (i) apply for a permit with a five-year duration to construct and operate a transfer



1 station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer
2 station, with a limited review of the permit five years after issuance of the initial permit and
3 five years after issuance of any amendment to the permit. In developing these rules, the
4 Department of Environment and Natural Resources shall examine the current fee schedule for
5 permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and
6 formulate recommendations for adjustments to the current fee schedule sufficient to address
7 any additional demands associated with review of permits issued for 10-year phases of landfill
8 development and the issuance permits with a duration of up to 10 years for transfer stations.
9 The Department shall report its findings and recommendations, including any legislative
10 proposals, to the Environmental Review Commission on or before December 1, 2012. The rules
11 required by this section shall not become effective until the fee schedule set forth under
12 G.S. 130A-295.8 is amended as necessary to address any additional demands associated with
13 review of permits issued for 10-year phases of landfill development and the issuance of permits
14 with a duration of up to 10 years to construct and operate transfer stations."

15
16 **PART II. CLARIFY LOCAL GOVERNMENT AUTHORITY UNDER THE**
17 **SEDIMENTATION AND POLLUTION CONTROL ACT**

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

19 **"§ 113A-64. Penalties.**

20 (a) Civil Penalties. –

- 21 (1) Any person who violates any of the provisions of this Article or any
22 ordinance, rule, or order adopted or issued pursuant to this Article by the
23 Commission or by a local government, or who initiates or continues a
24 land-disturbing activity for which an erosion and sedimentation control plan
25 is required except in accordance with the terms, conditions, and provisions
26 of an approved plan, is subject to a civil penalty. The maximum civil penalty
27 for a violation is five thousand dollars (\$5,000). A civil penalty may be
28 assessed from the date of the violation. Each day of a continuing violation
29 shall constitute a separate violation.
- 30 (2) The Secretary or a local government that administers an erosion and
31 sedimentation control program approved under G.S. 113A-60 shall
32 determine the amount of the civil penalty and shall notify the person who is
33 assessed the civil penalty of the amount of the penalty and the reason for
34 assessing the penalty. The notice of assessment shall be served by any means
35 authorized under ~~G.S. 1A-1, Rule 4, and G.S. 1A-1~~. A notice of assessment
36 by the Secretary shall direct the violator to either pay the assessment or
37 contest the assessment within 30 days by filing a petition for a contested
38 case under Article 3 of Chapter 150B of the General Statutes. If a violator
39 does not pay a civil penalty assessed by the Secretary within 30 days after it
40 is due, the Department shall request the Attorney General to institute a civil
41 action to recover the amount of the assessment. A notice of assessment by a
42 local government shall direct the violator to either pay the assessment or
43 contest the assessment within 30 days by filing a petition for hearing with
44 the local government as directed by procedures within the local ordinances
45 or regulations adopted to establish and enforce the erosion and sedimentation
46 control program. If a violator does not pay a civil penalty assessed by a local
47 government within 30 days after it is due, the local government may institute
48 a civil action to recover the amount of the assessment. The civil action may
49 be brought in the superior court of any county where the violation occurred
50 or the violator's residence or principal place of business is located. A civil
51 action must be filed within three years of the date the assessment was due.

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

(3) In determining the amount of the penalty, the Secretary or a local government shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this ~~Article~~ Article, or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government.

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

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

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

PART III. REPEAL THE REQUIREMENT FOR AIR POLLUTION PERMIT HOLDERS TO SUBMIT A WRITTEN DESCRIPTION OF PLANS TO REDUCE EMISSIONS OF AIR CONTAMINANTS BY SOURCE REDUCTION OR RECYCLING

SECTION 3. G.S. 143-215.108(g) is repealed.

PART IV. ADD A FACTOR FOR CONSIDERATION IN ASSESSING SOLID WASTE PENALTIES

SECTION 4. G.S. 130A-22 reads as rewritten:

"§ 130A-22. Administrative penalties.

...

(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary and the Secretary of Environment and Natural Resources shall consider all of the following factors:~~the degree and extent of the harm caused by the violation and the cost of rectifying the damage.~~

- (1) Type of violation.
- (2) Type of waste involved.
- (3) Duration of the violation.
- (4) Cause (whether resulting from a negligent, reckless, or intentional act or omission).
- (5) Potential effect on public health and the environment.
- (6) Effectiveness of responsive measures taken by the violator.
- (7) Damage to private property.
- (8) The degree and extent of harm caused by the violation.
- (9) Cost of rectifying any damage.
- (10) The amount of money the violator saved by noncompliance.
- (11) The violator's previous record in complying or not complying with the provisions of Article 9 of this Chapter, Article 11 of this Chapter, or

G.S. 130A-325, and any regulations adopted thereunder, as applicable to the violation in question.

...."

PART V. CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020

SECTION 5. Section 11.6(a) of S.L. 2011-394 reads as rewritten:

"**SECTION 11.6.(a)** Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed after January 1, ~~1991~~,1991, and prior to April 1, 2001, shall not be required to provide secondary containment until January 1, 2020."

PART VI. DIRECT THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES TO PROVIDE FOR NOTICE OF KNOWN CONTAMINATION TO APPLICANTS WHO SEEK TO CONSTRUCT NEW PRIVATE DRINKING WATER WELLS

SECTION 6. G.S. 87-97 is amended by adding a new subsection to read:

"(e1) Notice for Wells at Contamination Sites. – The Commission shall adopt rules governing permits issued for private drinking water wells for circumstances in which the local health department has determined that the proposed site for a private drinking water well is located within 1,000 feet of a known source of release of contamination. Rules adopted pursuant to this subsection shall provide for notice and information of the known source of release of contamination and any known risk of issuing a permit for the construction and use of a private drinking water well on such a site."

PART VII. EFFECTIVE DATE

SECTION 7. This act is effective when it becomes law.