

## **15A NCAC 04B .0118 APPROVAL OF PLANS**

(a) Persons conducting land-disturbing activity on a tract that covers one or more acres shall file the erosion and sedimentation control plan with the local government having jurisdiction or with the Commission if no local government has jurisdiction. The approving authority shall act on the plan within 30 days of receipt of the plan or the plan shall be deemed approved. A paper copy of the approved plan shall be kept on file at the job site. After approving a plan, if the Commission or local government determines, either upon review of such plan or upon inspection of the job site, that the plan is inadequate to meet the requirements of the Act and of this Chapter, the Commission or local government shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the approving authority.

(b) Commission Approval:

- (1) The Commission shall review plans for all land-disturbing activity over which the Commission has exclusive jurisdiction pursuant to G.S. 113A-56, and all other land-disturbing activity where no local government has jurisdiction.
- (2) The Commission shall complete its review of any completed plan within 30 days of receipt and shall notify the person submitting the plan in writing that it has been:
  - (A) approved;
  - (B) approved with modification; or
  - (C) disapproved.
- (3) The Commission's approval with modification or disapproval of any proposed plan shall entitle the person submitting the plan to an administrative hearing in accordance with the provisions of G.S. 150B-23.
- (4) Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act, G.S. 113, Article 1, and the Department rules set forth in 15A NCAC 01C shall be deemed incomplete until an environmental document is available for review. The Commission shall notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to Subparagraph (2) of this Paragraph shall not begin until the environmental document is available for review.

(c) An erosion and sedimentation control plan shall be disapproved unless the application includes an authorized statement of financial responsibility and documentation of property ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his or her attorney-in-fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents.

(d) Local Government Approval:

- (1) Local Governments administering erosion and sedimentation control programs shall develop and publish procedures for approval of plans. The procedures shall follow applicable laws, ordinances, and rules, and shall contain procedures for appeal consistent with the local government's organization and operations.
- (2) Appeals of local government decisions shall be conducted pursuant to G.S. 113A-61(c).
- (3) The Secretary shall appoint employees of the Department as he or she deems necessary to consider appeals from the local government's final disapproval or modification of a plan. Within 30 days following receipt of notification of the appeal, the departmental employee shall complete the review and shall notify the local government and the person appealing the local government's decision that the plan be approved, approved with modifications, or disapproved.
- (4) If the person submitting the plan disagrees with the decision reached by a Departmental employee, he or she may appeal the decision to the Commission by filing notice within 15 days with the Director of the Division of Energy, Mineral, and Land Resources. The Director shall make the proposed erosion control plan and the records relating to the local government's and Departmental employee's review, available to an erosion and sedimentation control plan review committee consisting of three members of the Commission appointed by the Chairman. Within 10 days following receipt of the notification of appeal, the erosion and sedimentation control plan review committee shall notify the local government and the person submitting the plan of a place and time for a hearing for consideration of the appeal. Both parties shall be given at least 15 days' notice of the hearing and an opportunity to present written or oral arguments. The erosion and sedimentation plan review committee shall notify both parties of its decision concerning the approval, disapproval, or modification of the proposed plan within 30 days following the hearing.

(e) The applicant's right under G.S. 113A-54.1(d) to appeal the Director's disapproval of an erosion control plan under G.S. 113A-54.1(c) gives rise to a right to an appeal to the Commission. An applicant desiring to appeal the Commission's disapproval of an erosion control plan shall file with the Office of Administrative Hearings a contested case petition under G.S. 150B, Article 3.

*History Note:*

*Authority G.S. 113A-2; 113A-54; 113A-54.1; 113A-57; 113A-60(a); 113A-61(b); 113A-61(c);*

*Eff. February 1, 1976;*

*Amended Eff. May 1, 1990; August 1, 1988;*

*Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;*

*Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); June 1, 1995; February 1, 1992;*

*Readopted Eff. April 1, 2020.*