

15A NCAC 04B .0118 APPROVAL OF PLANS

(a) Persons conducting land-disturbing activity on a tract which covers one or more acres shall file three copies of the erosion and sedimentation control plan with the local government having jurisdiction or with the Commission if no local government has jurisdiction, at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the job site. After approving a plan, if the Commission or local government determines, either upon review of such plan or on inspection of the job site, that a significant risk of accelerated erosion or off-site sedimentation exists, 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 appropriate authority.

(b) Commission Approval:

- (1) The Commission shall review plans for all land-disturbing activity over which the Commission has exclusive jurisdiction by statute and all other land-disturbing activity if 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,
 - (C) approved with performance reservations, or
 - (D) disapproved.
- (3) The Commission's disapproval, modification, or performance reservations 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. (This Section does not modify any other rights to a contested case hearing which may arise under G.S. 150B-23).
- (4) Subparagraph (b)(3) of this Rule shall not apply to the approval or modification of plans reviewed by the Commission pursuant to G.S. 113A-61(c).
- (5) Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act shall be deemed incomplete until a complete environmental document is available for review. The Commission shall promptly notify the person submitting the plan that the 30 day time limit for review of the plan pursuant to Subparagraph (b)(2) of this Rule shall not begin until a complete environmental document is available for review.

(c) Erosion and sedimentation control plans may also be disapproved unless they include an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his 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. Such procedures shall respect applicable laws, ordinances, and rules, and shall contain procedures for appeal consistent with the local government's organization and operations.
- (2) The secretary shall appoint such employee(s) of the Department as he 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, such departmental employee shall complete the review and shall notify the local government and the person appealing the local government's decision that the plan should be approved, approved with modifications, approved with performance reservations, or disapproved.
- (3) If either the local government or the person submitting the plan disagrees with the decision reached by an employee of the Department then he may appeal the decision to the Commission by filing notice within 15 days with the Director of the Division of Land Resources. The director shall make the proposed erosion control plan and the records relating to the local government's and departmental employees' review, available to an appeals review committee consisting of three members of the Commission appointed by the chairman. Within 10 days following receipt of the notification of

appeal, the appeals review committee shall notify the local government and the person submitting the plan of a place and time for consideration of the appeal, and shall afford both parties an opportunity to present written or oral arguments. The appeals review committee shall notify both parties of its decision concerning the approval, disapproval, or modification of the proposed plan within 30 days following such 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 a contested case under G.S. 150B, Article 3. An applicant desiring to appeal the Director'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. The general time limitation for filing a petition, and the commencement of the time limitation, shall be as set out in G.S. 150B-23(f). Contested cases shall be conducted under the procedures of G.S. 150B, Article 3 and applicable rules of the Office of Administrative Hearings. The Commission shall make the final decision on any contested case under G.S. 150B-36.

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Statutory Authority G.S. 113A-2; 113A-54; 113A-54.1; 113A-60(a); 113A-61(b); 113A-61(c); 150B, Article 3; 150B-23;
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