

By Mr. Durand of Marlborough, petition of Robert A. Durand, Robert D. Wetmore and Geoffrey C. Beckwith for legislation to reduce erosion and sediment pollution in the Commonwealth. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety.

AN ACT TO REDUCE EROSION AND SEDIMENT POLLUTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Notwithstanding the provisions of Chapter 21 of
2 the General Laws or any general or special law to the contrary,
3 the Massachusetts State Commission for the Conservation of Soil,
4 Water, and Related Resources, shall promulgate rules and
5 regulations for the control of soil erosion and sedimentation, to
6 be implemented by conservation districts in cooperation with
7 municipal conservation commissions.

1 SECTION 2. Definitions.

2 Certification — a written endorsement of a plan for soil erosion
3 and sediment control which indicates that the plan meets the
4 standards and specifications promulgated by the Commission.

5 Commission — the Massachusetts State Commission for the
6 Conservation of Soil, Water, and Related Resources established
7 pursuant to section nineteen of Chapter 21 of the General Laws
8 as amended by Chapter 354, Acts of 1985.

9 District — a conservation district organized pursuant to
10 sections eighteen through twenty-five of Chapter 21 of the General
11 Laws as amended by Chapter 354, Acts of 1985.

12 Conservation Commission — a local municipal conservation
13 commission organized pursuant to sections one through fifty-
14 seven of Chapter 40 of the General Laws.

15 Sediment — solid material, mineral or organic that is in

16 suspension, is being transported, or has been moved from its site
17 or origin by water, wind, ice and gravity as a product of erosion.

18 Erosion — the detachment and movement of soil or rock
19 fragments by water, wind, ice and gravity.

20 Land Disturbing Activity — any land change which may result
21 in soil erosion from water or wind and the movement of sediment
22 into waters or onto land in the state, including, but not limited
23 to, tilling, clearing, grading, excavating, transporting and filling
24 of land, other than federal lands, except that the term shall not
25 include minor land disturbing activities such as home gardens and
26 individual home landscaping repairs and maintenance work.

27 State Waters — any and all waters public or private on the
28 surface of the ground, which are contained within, flow through,
29 or border upon the Commonwealth of Massachusetts or any
30 portion thereof.

31 Standards — standards and specifications for soil erosion and
32 sediment control or any subsequent revisions promulgated by the
33 Commission.

34 Erosion and Sedimentation Control Plan — a scheme prepared
35 using the standards and specifications established by the
36 Commission which indicates land treatment measures, including
37 a schedule of the timing for their installation, to minimize soil
38 erosion and sedimentation.

39 Person — any individual, group of individuals, associates,
40 partnership, corporation, company, business, organization, trust,
41 estate, agency, department, political subdivision, authority, or any
42 other legal entity or its legal representative agents, or assigns.

43 Conservation Plan — a document containing resource
44 information and conservation practices for a specific land area
45 including erosion and sediment control provisions pertinent to the
46 land use and a schedule for installing those practices.

47 Cooperator Agreement — a formal request for technical
48 assistance made by a land owner or tenant to a conservation
49 district in order to develop and implement a conservation plan.

50 Land for Agricultural Production — land on farms which is
51 used or is in preparation to be used for the production of food,
52 feed, fiber, or plants.

53 Project — the disturbance of more than 5,000 square feet of
54 the surface area of land (1) for the accommodations of

55 construction which the State Building Code would require a
56 construction permit, except that the construction of a single-
57 family dwelling unit shall not be deemed a "project" under this
58 act unless such unit is part of a proposed subdivision, site plan,
59 conditional use, zoning variance, planned development or
60 construction permit application involving two or more such
61 single-family dwelling units, (2) for the demolition of one or more
62 structures, (3) for the construction of a parking lot, or (4) for the
63 operation of any mining or quarrying activity.

1 SECTION 3. The Commission shall promulgate rules and
2 regulations for the control of soil erosion and sedimentation in
3 the Commonwealth. The Commission shall establish an erosion
4 and sediment control committee consisting of the Secretary of
5 Environmental Affairs or his designee, Commission Chairman or
6 his designee, Secretary of Communities and Development or his
7 designee, State Conservationist-USDA/Soil Conservation
8 Service, Commissioner, Mass. Department of Public Works or
9 his designee, Mass. Attorney General or his designee, President
10 Mass. Association of Conservation Districts, President, Mass.
11 Home Builders Association, President, Mass. Society of
12 Professional Engineers, representatives of the Mass. Department
13 of Environmental Protection-Technical Services Branch and
14 Mass. Department of Environmental Management, and
15 President, Mass. Association of Conservation Commissions.

16 Said committee shall prepare and present said standards and
17 specifications to the Commission for its approval by April 1,
18 (1991). Said standards and specifications:

19 a. Shall be based upon relevant information including, but not
20 limited to, data relating to land use, vegetation, soils, topography,
21 hydrology, geology, climate, size of land area being disturbed,
22 proximate water bodies and their characteristics;

23 b. Shall include administrative procedures for the implemen-
24 tation of this act including application to the conservation district
25 for erosion and sedimentation control plan certification for any
26 land disturbing activity;

27 c. Shall include an appeal process and judicatory procedure for
28 the enforcement of this act.

1 SECTION 4. The Commission shall adopt, according to
2 Section 20 of Chapter 21 of the General Laws, a uniform fee
3 schedule and the conservation districts shall collect fees from
4 applicants. Fees shall be used for the review and certification of
5 plans, for on-site inspections and for monitoring of compliance
6 with certified plans. Fee shall bear a reasonable relationship to
7 the cost of rendering these services.

1 SECTION 5. The Commission is authorized, according to
2 Section 20 of Chapter 21 of the General Laws, to disburse funds
3 to conservation districts to carry out the purposes of this act.

1 SECTION 6. The conservation districts and conservation
2 commissions are authorized to cooperate and enter into written
3 agreements to carry out the purposes of this act.

1 SECTION 7. The District shall certify such plan if it meets the
2 standards and specifications promulgated by the Commission
3 pursuant to this act. The District shall provide written notice to
4 the applicant and the local authorities indicating that:

- 5 a. the plan was certified or
 - 6 b. the plan was certified subject to attached conditions or
 - 7 c. the plan was denied certification with reasons for denial
- 8 stated.

1 SECTION 8. The District shall grant or deny certification
2 within a period of thirty days of submission of a complete
3 application unless by mutual agreement in writing between the
4 District and the applicant, the period of thirty days is extended
5 for an additional period of thirty days. Failure of the District to
6 grant or deny certification within the thirty day period or such
7 extension thereof shall constitute certification.

1 SECTION 9. The District by a majority vote at a duly
2 convened District meeting may delegate administration of
3 Sections 7 and 8 to District staff.

1 SECTION 10. No certification shall be required for land
2 disturbing activities which are executed by the Mass. Department
3 of Public Works provided that said department shall certify a plan

4 for any project that it proposes to construct and shall file such
5 certification with the District. Certification by the Mass.
6 Department of Public Works shall be pursuant to this act.

1 SECTION 11. No certification shall be required for land
2 disturbing activities in conformance with a Forest Cutting Plan
3 under General Laws, chapter 132, sections 40 through 46,
4 approved by and on file with the Division of Forests and Parks
5 in the Mass. Department of Environmental Management,
6 provided that a copy of the approved plan including any
7 amendments, is on file and the final compliance report is
8 submitted to the District where said land is located, and provided
9 further that only work described in said plan, while said plan is
10 current, shall be exempt.

1 SECTION 12. No certification shall be required for land
2 agricultural production provided that a cooperator agreement,
3 which provides for the development and implementation of a
4 conservation plan within five years, has been executed between
5 the land owner or the tenant with written consent of the owner
6 of the land, and the District.

1 SECTION 13. The District prior to the issuance of any
2 certification may require from the applicant a reasonable
3 performance bond with surety, cash escrow, letter of credit, any
4 combination thereof, or such other legal arrangements acceptable
5 to the District, to ensure that measures could be taken at the
6 applicant's expense should he fail, after proper notice, within the
7 time specified to initiate or maintain appropriate erosion and
8 sediment control measures which are detailed in a certified erosion
9 and sedimentation control plan. In the event the applicant fails
10 to implement the certified erosion and sedimentation control plan,
11 the District may take action and collect from the applicant for
12 the difference should the amount of the reasonable cost of such
13 action exceed the amount of the security held. Within sixty days
14 of the achievement of the cited land disturbing activity, such bond,
15 cash escrow, letter of credit, or other legal arrangement or the
16 unexpended or unobligated portion thereof, shall be refunded to
17 the applicant or terminated as the case may be.

1 SECTION 14. The District shall provide for periodic on-site
2 inspections of the project and shall require the submission of
3 reports from the person responsible for carrying out the certified
4 erosion and sedimentation control plan, to ensure compliance
5 with said plan, and to determine whether the measures required
6 in said plan are effective in controlling erosion and sedimentation
7 resulting from the land disturbing activities. Notice of such right
8 of inspection shall be included in the certified plan. The owner
9 or operator shall be given an opportunity to accompany the
10 inspector. If the District determines that there is a failure to
11 comply with the certified plan the District shall by registered or
12 certified mail, serve notice to the local authorities and the person
13 responsible for carrying out the plan to the address specified in
14 the certified plan or at the site of the land disturbing activities
15 or to the agent or employee supervising such activities. The notice
16 shall specify the measures needed to comply with the certified plan
17 and shall specify the time within which such measures shall be
18 completed. Upon failure to comply within the time specified, the
19 District shall revoke the certification and the person responsible
20 for carrying out the certified plan shall be deemed in violation
21 of this act.

1 SECTION 15. A certified plan may be changed by the District
2 which has certified the plan in the following cases:
3 a. Where inspection has revealed the inadequacy of the certified
4 plan to accomplish the erosion and sediment control objectives
5 of the plan, and appropriate modifications to correct the
6 deficiencies of the plan are agreed to by the District and the person
7 responsible for carrying out the plan; or
8 b. Where the person responsible for carrying out the certified
9 plan finds that because of changed circumstances, or for other
10 reasons the certified plan cannot be effectively carried out, and
11 proposed amendments to the plan, consistent with the
12 requirements of this act, are agreed to by the District and the
13 person responsible for carrying out the plan.

1 SECTION 16. No certificate of occupancy for a project shall
2 be issued by a municipality unless there has been compliance with
3 provisions of a certified plan for permanent measures to control
4 soil erosion and sedimentation.

1 SECTION 17. The Attorney General, to carry out the
2 provisions of this act, shall provide any and all legal services to
3 any District.

1 SECTION 18. If any provision of this act or the application
2 thereof to any person or circumstances is held invalid, the
3 remainder of the act and the application of such provision to
4 persons or circumstances other than those to which it is held
5 invalid, shall not be affected hereby.

1 SECTION 19. This act shall take effect on July 1, 1991 except
2 that Section 3 of this act shall take effect upon its passage.

