

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

1

SENATE BILL 451

Short Title: Improve Environmental Enforcement.

(Public)

Sponsors: Senator Daniel.

Referred to: Environment and Natural Resources.

April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE INVESTIGATION AND ENFORCEMENT OF
CRIMES AGAINST THE ENVIRONMENT, TO DECLARE UNLAWFUL
DISCHARGES TO BE CRIMES AND TO ESTABLISH A THREE-YEAR
STATUTE OF LIMITATION FOR THE COLLECTION OF CERTAIN
ENVIRONMENTAL CIVIL PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-399(i)(3) reads as rewritten:

"(3) 'Law enforcement officer' means any officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, 'law enforcement officer' means any employee of a county or municipal park or recreation department designated by the department head as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9);".

Sec. 2. G.S. 114-15 reads as rewritten:

"§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.

(a) The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the

1 State; shall investigate all cases arising from frauds in connection with elections when
2 requested to do so by the Board of Elections, and when so directed by the Governor.
3 Such investigation, however, shall in nowise interfere with the power of the Attorney
4 General to make such investigation as he is authorized to make under the laws of the
5 State. The Bureau is authorized further, at the request of the Governor, to investigate
6 cases of frauds arising under the Social Security Laws of the State, of violations of the
7 gaming laws, and lottery laws, and matters of similar kind when called upon by the
8 Governor so to do. In all such cases it shall be the duty of the Department to keep such
9 records as may be necessary and to prepare evidence in the cases investigated, for the
10 use of enforcement officers and for the trial of causes. The services of the Director of
11 the Bureau, and of his assistants, may be required by the Governor in connection with
12 the investigation of any crime committed anywhere in the State when called upon by the
13 enforcement officers of the State, and when, in the judgment of the Governor, such
14 services may be rendered with advantage to the enforcement of the criminal law. The
15 State Bureau of Investigation is hereby authorized to investigate without request the
16 attempted arson of, or arson of, damage of, theft from, or theft of, or misuse of, any
17 State-owned personal property, buildings, or other real property or any assault upon or
18 threats against any legislative officer named in G.S. 147-2(1), (2), or (3) or any
19 executive officer named in G.S. 147-3(c). The Bureau also is authorized at the request
20 of the Governor to conduct a background investigation on a person that the Governor
21 plans to nominate for a position that must be confirmed by the General Assembly, the
22 Senate, or the House of Representatives. The background investigation of the proposed
23 nominee shall be limited to an investigation of the person's criminal record, educational
24 background, employment record, records concerning the listing and payment of taxes,
25 and credit record, and to a requirement that the person provide the information
26 contained in the statements of Executive Order Number 1, filed on January 31, 1985, as
27 contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985).
28 The Governor must give the person being investigated written notice that he intends to
29 request a background investigation at least 10 days prior to the date that he requests the
30 State Bureau of Investigation to conduct the background investigation. The written
31 notice shall be sent by regular mail, and there is created a rebuttable presumption that
32 the person received the notice if the governor has a copy of the notice.

33 (b) The State Bureau of Investigation is further authorized, upon request of the
34 Governor or the Attorney General, to investigate the commission or attempted
35 commission of the crimes defined in the following statutes:

- 36 (1) All sections of Article 4A of Chapter 14 of the General Statutes;
- 37 (2) G.S. 14-277.1;
- 38 (3) G.S. 14-277.2;
- 39 (4) G.S. 14-283;
- 40 (5) G.S. 14-284;
- 41 (6) G.S. 14-284.1;
- 42 (7) G.S. 14-288.2;
- 43 (8) G.S. 14-288.7;
- 44 (9) G.S. 14-288.8; and

- 1 (10) ~~G.S. 14-288.20~~; 14-288.20;
- 2 (11) G.S. 14-284.2;
- 3 (12) G.S. 14-399(e);
- 4 (13) G.S. 130A-26.1;
- 5 (14) G.S. 143-215.6B;
- 6 (15) G.S. 143-215.88B; and
- 7 (16) G.S. 143-215.114B.

8 (c) All records and evidence collected and compiled by the Director of the
9 Bureau and his assistants shall not be considered public records within the meaning of
10 G.S. 132-1, and following, of the General Statutes of North Carolina and may be made
11 available to the public only upon an order of a court of competent jurisdiction. Provided
12 that all records and evidence collected and compiled by the Director of the Bureau and
13 his assistants shall, upon request, be made available to the district attorney of any
14 district if the same concerns persons or investigations in his district.

15 (d) In all cases where the cost is assessed against the defendant and paid by him,
16 there shall be assessed in the bill of cost, mileage and witness fees to the Director and
17 any of his assistants who are witnesses in cases arising in courts of this State. The fees
18 so assessed, charged and collected shall be forwarded by the clerks of the court to the
19 Treasurer of the State of North Carolina, and there credited to the Bureau of
20 Identification and Investigation Fund."

21 Sec. 3. G.S. 143-215.6A reads as rewritten:

22 **"§ 143-215.6A. Enforcement procedures; civil penalties.**

23 (a) A civil penalty of not more than ten thousand dollars (\$10,000) may be
24 assessed by the Secretary against any person who:

- 25 (1) Violates any classification, standard, limitation, or management
26 practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-
27 215.
- 28 (2) Is required but fails to apply for or to secure a permit required by G.S.
29 143-215.1, or who violates or fails to act in accordance with the terms,
30 conditions, or requirements of such ~~permit~~ permit or any other permit
31 or certification issued pursuant to authority conferred by this Part,
32 including pretreatment permits issued by local governments and
33 laboratory certifications.
- 34 (3) Violates or fails to act in accordance with the terms, conditions, or
35 requirements of any special order or other appropriate document issued
36 pursuant to G.S. 143-215.2.
- 37 (4) Fails to file, submit, or make available, as the case may be, any
38 documents, data, or reports required by this Article or G.S. 143-355(k)
39 relating to water use information.
- 40 (5) Refuses access to the Commission or its duly designated representative
41 to any premises for the purpose of conducting a lawful inspection
42 provided for in this Article.
- 43 (6) Violates a rule of the Commission implementing this Part or G.S. 143-
44 355(k).

1 (7) Violates or fails to act in accordance with the statewide minimum
2 water supply watershed management requirements adopted pursuant to
3 G.S. 143-214.5, whether enforced by the Commission or a local
4 government.

5 (8) Violates the offenses set out in G.S. 143-215.6B.

6 (b) If any action or failure to act for which a penalty may be assessed under this
7 section is continuous, the Secretary may assess a penalty not to exceed ten thousand
8 dollars (\$10,000) per day for so long as the violation continues, unless otherwise
9 stipulated.

10 (c) In determining the amount of the penalty the Secretary shall consider the
11 factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall
12 apply to civil penalty assessments that are presented to the Commission for final agency
13 decision.

14 (d) The Secretary shall notify any person assessed a civil penalty of the
15 assessment and the specific reasons therefor by registered or certified mail, or by any
16 means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within
17 30 days of receipt of the notice of assessment.

18 (e) Consistent with G.S. 143B-282.1, a civil penalty of not more than ten thousand
19 dollars (\$10,000) per month may be assessed by the Commission against any local
20 government which fails to adopt or enforce a water supply watershed protection
21 program as required by G.S. 143-214.5. No such penalty shall be imposed against a
22 local government until the Commission has assumed the responsibility for administering
23 and enforcing the local water supply watershed protection program. Civil penalties
24 shall be imposed pursuant to a uniform schedule adopted by the Commission. The
25 schedule of civil penalties shall be based on acreage and other relevant cost factors and
26 shall be designed to recoup the costs of administration and enforcement.

27 (f) Requests for remission of civil penalties shall be filed with the Secretary.
28 Remission requests shall not be considered unless made within 30 days of receipt of the
29 notice of assessment. Remission requests must be accompanied by a waiver of the right
30 to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on
31 which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c)
32 and (d), remission requests may be resolved by the Secretary and the violator. If the
33 Secretary and the violator are unable to resolve the request, the Secretary shall deliver
34 remission requests and his recommended action to the Committee on Civil Penalty
35 Remissions of the Environmental Management Commission appointed pursuant to G.S.
36 143B-282.1(c).

37 (g) If any civil penalty has not been paid within 30 days after notice of
38 assessment has been served on the violator, the Secretary shall request the Attorney
39 General to institute a civil action in the Superior Court of any county in which the
40 violator resides or has his or its principal place of business to recover the amount of the
41 assessment, unless the violator contests the assessment as provided in subdivision (4) of
42 this subsection, or requests remission of the assessment in whole or in part as provided
43 in subdivision (6) of this subsection. If any civil penalty has not been paid within 30
44 days after the final agency decision or court order has been served on the violator, the

1 Secretary shall request the Attorney General to institute a civil action in the Superior
2 Court of any county in which the violator resides or has his or its principal place of
3 business to recover the amount of the assessment. Such civil actions must be filed
4 within three years of the date the final agency decision or court order was served on the
5 violator.

6 (h) The Secretary may delegate his powers and duties under this section to the
7 Director of the Division of Environmental Management of the Department.

8 (i) As used in this subsection, 'municipality' refers to any unit of local
9 government which operates a wastewater treatment plant. As used in this subsection,
10 'unit of local government' has the same meaning as in G.S. 130A-290. The provisions
11 of this subsection shall apply whenever a municipality that operates a wastewater
12 treatment plant with an influent bypass diversion structure and with a permitted
13 discharge of 10 million gallons per day or more into any of the surface waters of the
14 State that have been classified as nutrient sensitive waters (NSW) under rules adopted
15 by the Commission is subject to a court order which specifies (i) a schedule of activities
16 with respect to the treatment of wastewater by the municipality; (ii) deadlines for the
17 completion of scheduled activities; and (iii) stipulated penalties for failure to meet such
18 deadlines. A municipality as specified herein that violates any provision of such order
19 for which a penalty is stipulated shall pay the full amount of such penalty as provided in
20 the order unless such penalty is modified, remitted, or reduced by the court.

21 (j) Local governments certified and approved to administer and enforce
22 pretreatment programs by the Commission pursuant to G.S. 143-215.3(a)(14) may
23 assess civil penalties for violations of their respective programs in accordance with the
24 powers conferred upon the Commission and the Secretary in this section, except that
25 actions for collection of unpaid civil penalties shall be referred to the attorney
26 representing the assessing local government."

27 Sec. 4. G.S. 143-215.6B reads as rewritten:

28 "**§ 143-215.6B. Enforcement procedures: criminal penalties.**

29 (a) For purposes of this section, the term 'person' shall mean, in addition to the
30 definition contained in G.S. 143-212, any responsible corporate or public officer or
31 employee; provided, however, that where a vote of the people is required to effectuate
32 the intent and purpose of this Article by a county, city, town, or other political
33 subdivision of the State, and the vote on the referendum is against the means or
34 machinery for carrying said intent and purpose into effect, then, and only then, this
35 section shall not apply to elected officials or to any responsible appointed officials or
36 employees of such county, city, town, or political subdivision.

37 (b) No proceeding shall be brought or continued under this section for or on
38 account of a violation by any person who has previously been convicted of a federal
39 violation based upon the same set of facts.

40 (c) In proving the defendant's possession of actual knowledge, circumstantial
41 evidence may be used, including evidence that the defendant took affirmative steps to
42 shield himself from relevant information. Consistent with the principles of common
43 law, the subjective mental state of defendants may be inferred from their conduct.

1 (d) For the purposes of the felony provisions of this section, a person's state of
2 mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is
3 the subject of the prosecution is the result of any of the following occurrences or
4 circumstances:

- 5 (1) A natural disaster or other act of God which could not have been
6 prevented or avoided by the exercise of due care or foresight.
- 7 (2) An act of third parties other than agents, employees, contractors, or
8 subcontractors of the defendant.
- 9 (3) An act done in reliance on the written advice or emergency on-site
10 direction of an employee of the Department. In emergencies, oral
11 advice may be relied upon if written confirmation is delivered to the
12 employee as soon as practicable after receiving and relying on the
13 advice.
- 14 (4) An act causing no significant harm to the environment or risk to the
15 public health, safety, or welfare and done in compliance with other
16 conflicting environmental requirements or other constraints imposed in
17 writing by environmental agencies or officials after written notice is
18 delivered to all relevant agencies that the conflict exists and will cause
19 a violation of the identified standard.
- 20 (5) Violations of permit limitations causing no significant harm to the
21 environment or risk to the public health, safety, or welfare for which
22 no enforcement action or civil penalty could have been imposed under
23 any written civil enforcement guidelines in use by the Department at
24 the time, including but not limited to, guidelines for the pretreatment
25 permit civil penalties. This subdivision shall not be construed to
26 require the Department to develop or use written civil enforcement
27 guidelines.
- 28 (6) Occasional, inadvertent, short-term violations of permit limitations
29 causing no significant harm to the environment or risk to the public
30 health, safety, or welfare. If the violation occurs within 30 days of a
31 prior violation or lasts for more than 24 hours, it is not an occasional,
32 short-term violation.

33 (e) All general defenses, affirmative defenses, and bars to prosecution that may
34 apply with respect to other criminal offenses under State criminal offenses may apply to
35 prosecutions brought under this section or other criminal statutes that refer to this
36 section and shall be determined by the courts of this State according to the principles of
37 common law as they may be applied in the light of reason and experience. Concepts of
38 justification and excuse applicable under this section may be developed in the light of
39 reason and experience.

40 (f) Any person who negligently violates ~~any~~any: (i) classification, standard
41 standard, or limitation established in rules adopted by the Commission pursuant to G.S.
42 143-214.1, 143-214.2, or 143-215; ~~any~~(ii) term, condition, or requirement of a permit
43 issued pursuant to this Part, including permits issued pursuant to G.S. 143-215.1,
44 pretreatment permits issued by local governments, and laboratory certifications; G.S.

1 ~~143-215.1 or (iii) term, condition, or requirement~~ of a special order or other appropriate
2 document issued pursuant to G.S. 143-215.2; or ~~any (iv) rule~~ of the Commission
3 ~~implementing any of the said sections, this Part; and any person who negligently fails to~~
4 apply for or to secure a permit required by G.S. 143-215.1 shall be guilty of a
5 misdemeanor punishable by a fine not to exceed fifteen thousand dollars (\$15,000) per
6 day of violation, provided that such fine shall not exceed a cumulative total of two
7 hundred thousand dollars (\$200,000) for each period of 30 days during which a
8 violation continues, or by imprisonment not to exceed six months, or by both.

9 (g) Any person who knowingly and willfully violates ~~any any (i) classification,~~
10 standard, or limitation established in ~~the rules of~~ adopted by the Commission pursuant to
11 G.S. 143-214.1, 143-214.2, or ~~143-215 or any 143-215;~~ (ii) term, condition, or
12 requirement of a permit issued pursuant to this Part, including permits issued pursuant
13 to G.S. 143-215.1, pretreatment permits issued by local governments, and laboratory
14 certifications; G.S. 143-215.1 or (iii) term, condition, or requirement of a special order or
15 other appropriate document issued pursuant to G.S. ~~143-215.2~~ 143-215.2; and any
16 person who negligently fails to apply for or to secure a permit required by G.S. 143-
17 215.1 shall be guilty of a Class J felony, punishable by a fine not to exceed one hundred
18 thousand dollars (\$100,000) per day of violation, provided that this fine shall not exceed
19 a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30
20 days during which a violation continues, or by imprisonment not to exceed three years,
21 or by both. For the purposes of this subsection, the phrase 'knowingly and willfully'
22 shall mean intentionally and consciously as the courts of this State, according to the
23 principles of common law interpret the phrase in the light of reason and experience.

24 (h) (1) Any person who knowingly violates ~~any any:~~ (i)
25 classification, standard, or limitation established in the rules of
26 adopted by the Commission pursuant to G.S. 143-214.1, 143-214.2,
27 143-215, or any 143-215; (ii) term, condition, or requirement of a
28 permit issued pursuant to this Part, including permits issued pursuant
29 to G.S. 143-215.1, pretreatment permits issued by local
30 governments, and laboratory certifications; G.S. 143-215.1 or (iii)
31 term, condition, or requirement of a special order or other
32 appropriate document issued pursuant to G.S. ~~143-215.2~~ 143-215.2;
33 and any person who negligently fails to apply for or to secure a
34 permit required by G.S. 143-215.1 and who knows at that time that
35 he thereby places another person in imminent danger of death or
36 serious bodily injury shall be guilty of a Class H felony, punishable
37 by a fine not to exceed two hundred fifty thousand dollars
38 (\$250,000) per day of violation, provided that this fine shall not
39 exceed a cumulative total of one million dollars (\$1,000,000) for
40 each period of 30 days during which a violation continues, or by
41 imprisonment not to exceed 10 years, or by both.

42 (2) For the purposes of this subsection, a person's state of mind is knowing
43 with respect to:

44 a. His conduct, if he is aware of the nature of his conduct;

- 1 b. An existing circumstance, if he is aware or believes that the
2 circumstance exists; or
3 c. A result of his conduct, if he is aware or believes that his
4 conduct is substantially certain to cause danger of death or
5 serious bodily injury.
- 6 (3) Under this subsection, in determining whether a defendant who is a
7 natural person knew that his conduct placed another person in
8 imminent danger of death or serious bodily injury:
9 a. The person is responsible only for actual awareness or actual
10 belief that he possessed; and
11 b. Knowledge possessed by a person other than the defendant but
12 not by the defendant himself may not be attributed to the
13 defendant.
- 14 (4) It is an affirmative defense to a prosecution under this subsection that
15 the conduct charged was conduct consented to by the person
16 endangered and that the danger and conduct charged were reasonably
17 foreseeable hazards of an occupation, a business, or a profession; or of
18 medical treatment or medical or scientific experimentation conducted
19 by professionally approved methods and such other person had been
20 made aware of the risks involved prior to giving consent. The
21 defendant may establish an affirmative defense under this subdivision
22 by a preponderance of the evidence.
- 23 (i) Any person who knowingly makes any false statement, representation, or
24 certification in any application, record, report, plan, or other document filed or required
25 to be maintained under this Article or a rule implementing this Article; or who
26 knowingly makes a false statement of a material fact in a rulemaking proceeding or
27 contested case under this Article; or who falsifies, tampers with, or knowingly renders
28 inaccurate any recording or monitoring device or method required to be operated or
29 maintained under this Article or rules of the Commission implementing this Article
30 shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars
31 (\$10,000), or by imprisonment not to exceed six months, or by both.
- 32 (j) Any person convicted of a felony offense under subsections (g), (h), or (i) of
33 this section following a previous felony conviction under this section shall be subject to
34 a fine, or imprisonment, or both, not exceeding twice the amount of the fine, or twice
35 the term of imprisonment provided in the subsection under which the second or
36 subsequent conviction occurs."

37 Sec. 5. G.S. 143-215.6C reads as rewritten:

38 "**§ 143-215.6C. Enforcement procedures; injunctive relief—relief and summary**
39 **suspension.**

40 (a) Whenever the Department has reasonable cause to believe that any person has
41 violated or is threatening to violate any of the provisions of this Part, any of the terms of
42 any permit issued pursuant to this Part, or a rule implementing this Part, the Department
43 may, either before or after the institution of any other action or proceeding authorized
44 by this Part, request the Attorney General to institute a civil action in the name of the

1 State upon the relation of the Department for injunctive relief to restrain the violation or
2 threatened violation and for such other and further relief in the premises as the court
3 shall deem proper. The Attorney General may institute such action in the superior court
4 of the county in which the violation occurred or may occur or, in his discretion, in the
5 superior court of the county in which the person responsible for the violation or
6 threatened violation resides or has his or its principal place of business. Upon a
7 determination by the court that the alleged violation of the provisions of this Part or the
8 regulations of the Commission has occurred or is threatened, the court shall grant the
9 relief necessary to prevent or abate the violation or threatened violation. Neither the
10 institution of the action nor any of the proceedings thereon shall relieve any party to
11 such proceedings from any penalty prescribed for violation of this Part. For purposes of
12 this section references to 'this Part' include G.S. 143-355(k) relating to water use
13 information.

14 (b) In conjunction with an administrative enforcement action resulting in a notice
15 of violation, the Department may issue a summary suspension of a permit or laboratory
16 certification issued pursuant to this Part whenever reasonable cause exists to believe that
17 the violation included or caused an unauthorized release of a hazardous or toxic
18 substance resulting in an imminent hazard and the Secretary or his designee reasonably
19 believes that further releases may occur. The summary suspension may be ordered
20 effective on the date specified in the order or on service of the certified copy of the
21 order at the last known address of the violator, whichever is later. Summary
22 suspensions issued under this subsection are subject to review by the Office of
23 Administrative Hearings pursuant to G.S. 150B-33(b)(6). For purposes of this
24 subsection, the term 'imminent hazard' has the same meaning as in G.S.130A-2."

25 Sec. 6. G.S. 113A-64(a)(2) reads as rewritten:

26 "(2) The Secretary, for violations under the Commission's jurisdiction, or
27 the governing body of any local government having jurisdiction, shall
28 determine the amount of the civil penalty to be assessed under G.S.
29 113A-64(a) and shall make written demand for payment upon the
30 person responsible for the violation, and shall set forth in detail the
31 violation for which the penalty has been invoked. If payment is not
32 received or equitable settlement reached within 30 days after demand
33 for payment is made, the Secretary shall refer the matter to the
34 Attorney General for the institution of a civil action in the name of the
35 State in the superior court of the county in which the violation is
36 alleged to have occurred to recover the amount of the penalty, and
37 local governments shall refer such matters to their respective attorneys
38 for the institution of a civil action in the name of the local government
39 in the appropriate division of the General Court of Justice of the
40 county in which the violation is alleged to have occurred for recovery
41 of the penalty. Such civil actions must be filed within three years of
42 the date the final agency decision was served on the violator. Any
43 sums recovered shall be used to carry out the purposes and
44 requirements of this Article."

1 Sec. 7. G.S. 113A-126(d)(3) reads as rewritten:

2 "(3) The Commission may assess the penalties provided for in this
3 subsection. The Commission shall notify a person who is assessed a
4 penalty by registered or certified mail. The notice shall state the
5 reasons for the penalty. A person may contest a penalty by filing a
6 petition for a contested case under G.S. 150B-23 within 20 days after
7 receiving the notice of assessment. If a person fails to pay a penalty,
8 the Commission shall refer the matter to the Attorney General for
9 collection. Such civil actions must be filed within three years of the
10 date the final agency decision was served on the violator."

11 Sec. 8. G.S. 143-215.114A(f) reads as rewritten:

12 "(f) If any civil penalty has not been paid within 30 days after notice of
13 assessment has been served on the violator, the Secretary shall request the Attorney
14 General to institute a civil action in the Superior Court of any county in which the
15 violator resides or has his or its principal place of business to recover the amount of the
16 assessment, unless the violator contests the assessment as provided in subdivision (4) of
17 this subsection, or requests remission of the assessment in whole or in part as provided
18 in subdivision (5) of this subsection. If any civil penalty has not been paid within 30
19 days after the final agency decision or court order has been served on the violator, the
20 Secretary shall request the Attorney General to institute a civil action in the Superior
21 Court of any county in which the violator resides or has his or its principal place of
22 business to recover the amount of the assessment. Such civil actions must be filed
23 within three years of the date the final agency decision or court order was served on the
24 violator."

25 Sec. 9. G.S. 130A-22(a) reads as rewritten:

26 "**§ 130A-22. Administrative penalties.**

27 (a) The Secretary may impose an administrative penalty on a person who violates
28 Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any
29 order issued under Article 9. Each day of a continuing violation shall constitute a
30 separate violation. The penalty shall not exceed five thousand dollars (\$5,000) per day
31 in the case of a violation involving nonhazardous waste. The penalty shall not exceed
32 twenty-five thousand dollars (\$25,000) per day in case of a first violation involving
33 hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical
34 waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical
35 waste entering waters or lands of the State; and shall not exceed fifty thousand dollars
36 (\$50,000) per day for a second or further violation involving the disposal of medical
37 waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical
38 waste entering waters or lands of the State. If a person fails to pay a civil penalty within
39 30 days after the final agency decision or court order has been served on the violator,
40 the Secretary shall request the Attorney General to institute a civil action in the superior
41 court of any county in which the violator resides or has his or its principal place of
42 business to recover the amount of the assessment. Such civil actions must be filed
43 within three years of the date the final agency decision or court order was served on the
44 violator."

1 Sec. 10. This act is effective on 1 July 1991.