

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE DRS85221-SB-12 (03/09)

Short Title: Improve Environmental Enforcement. (Public)

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF VARIOUS ENVIRONMENTAL LAWS, TO AUTHORIZE THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO ISSUE ADMINISTRATIVE ORDERS, AND TO ESTABLISH A PILOT PROGRAM THAT ALLOWS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO DETERMINE AND RETAIN THE ACTUAL COSTS OF COLLECTING CIVIL PENALTIES, FINES, AND FORFEITURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-64(a)(1) reads as rewritten:

"(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who 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, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars ~~(\$5,000)~~. (\$5,000), except that, in order to deter violations, the Secretary may assess a civil penalty of up to ten thousand dollars (\$10,000) for the first day of a violation. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation."

SECTION 2. G.S. 113A-126(d) reads as rewritten:

"(d) (1) A civil penalty of not more than ~~two hundred fifty dollars (\$250.00)~~ one thousand dollars (\$1,000) for a minor development violation and ~~two thousand five hundred dollars (\$2,500)~~ ten thousand dollars

1 (\$10,000) for a major development violation may be assessed by the
2 Commission against any person who:

- 3 a. Is required but fails to apply for or to secure a permit required
4 by G.S. 113A-118, or who violates or fails to act in accordance
5 with the terms, conditions, or requirements of such permit.
6 b. Fails to file, submit, or make available, as the case may be, any
7 documents, data or reports required by the Commission
8 pursuant to this Article.
9 c. Refuses access to the Commission or its duly designated
10 representative, who has sufficiently identified himself by
11 displaying official credentials, to any premises, not including
12 any occupied dwelling house or curtilage, for the purpose of
13 conducting any investigations provided for in this Article.
14 d. Violates a rule of the Commission implementing this Article.

15 (2) For each willful action or failure to act for which a penalty may be
16 assessed under this subsection, the Commission may consider each day
17 the action or inaction continues after notice is given of the violation as
18 a separate violation; a separate penalty may be assessed for each such
19 separate violation.

20 (3) ~~The Commission may assess the penalties provided for in this~~
21 ~~subsection.~~ The Commission shall notify a person who is assessed a
22 penalty or investigative costs by registered or certified mail. The notice
23 shall state the reasons for the penalty. A person may contest the
24 assessment of a penalty or investigative costs by filing a petition for a
25 contested case under G.S. 150B-23 within 20 days after receiving the
26 notice of assessment. If a person fails to pay ~~a penalty, any civil~~
27 ~~penalty or investigative cost assessed under this subsection,~~ the
28 Commission shall refer the matter to the Attorney General for
29 collection. An action to collect a penalty must be filed within three
30 years after the date the final agency decision was served on the
31 violation.

32 (4) In determining the amount of the ~~penalty~~ civil penalty, the
33 Commission shall consider ~~the degree and extent of harm caused by~~
34 ~~the violation and the cost of rectifying the damage.~~ the following
35 factors:

- 36 a. The degree and extent of harm, including, but not limited to,
37 harm to the natural resources of the State, to the public health,
38 or to private property resulting from the violation;
39 b. The duration and gravity of the violation;
40 c. The effect on water quality, coastal resources, or public trust
41 uses;
42 d. The cost of rectifying the damage;
43 e. The amount of money saved by noncompliance;
44 f. Whether the violation was committed willfully or intentionally;

1 g. The prior record of the violator in complying or failing to
2 comply with programs over which the Commission has
3 regulatory authority; and

4 h. The cost to the State of the enforcement procedures.

5 (4a) The Commission may also assess a person who is assessed a civil
6 penalty under this subsection the reasonable costs of any investigation,
7 inspection, or monitoring that results in the assessment of the civil
8 penalty. For a minor development violation, the amount of an
9 assessment of investigative costs shall not exceed one-half of the
10 amount of the civil penalty assessed or one thousand dollars (\$1,000),
11 whichever is less. For a major development violation, the amount of an
12 assessment of investigative costs shall not exceed one-half of the
13 amount of the civil penalty assessed or two thousand five hundred
14 dollars (\$2,500), whichever is less.

15 (5) The clear proceeds of penalties assessed pursuant to this subsection
16 shall be remitted to the Civil Penalty and Forfeiture Fund in
17 accordance with G.S. 115C-457.2."

18 **SECTION 3.** G.S. 130A-18(a) reads as rewritten:

19 "(a) If a person shall violate ~~violates~~ any provision of this Chapter or the rules
20 Chapter, any rule adopted by the Commission or rules Commission, any rule adopted by
21 a local board of health ~~health,~~ any order issued pursuant to this Chapter, or any order
22 issued pursuant to rules adopted by the Commission, the Secretary or a local health
23 director may institute an action for injunctive relief, irrespective of all other remedies at
24 law, in the superior court of the county where the violation occurred or where a
25 defendant resides."

26 **SECTION 4.** G.S. 130A-22(a) reads as rewritten:

27 "(a) The Secretary of Environment and Natural Resources may impose an
28 administrative penalty on a person who violates Article 9 of this Chapter, rules adopted
29 by the Commission pursuant to Article 9, or any order issued under Article 9. Each day
30 of a continuing violation shall constitute a separate violation. The penalty shall not
31 exceed ~~five~~ ~~ten~~ thousand dollars (~~\$5,000~~) (~~\$10,000~~) per day in the case of a violation
32 involving nonhazardous waste. The penalty shall not exceed ~~twenty-five thousand~~
33 dollars (~~\$25,000~~) ~~twenty-seven thousand five hundred dollars~~ (\$27,500) per day in the
34 case of a ~~first~~ violation involving hazardous ~~waste~~ ~~waste~~, as defined in G.S. ~~130A-290~~
35 ~~or~~ ~~130A-290~~, or for a failure to make a determination whether a solid waste is a
36 ~~hazardous waste~~. The penalty shall not exceed twenty-five thousand dollars (\$25,000)
37 per day for a first violation involving the disposal of medical waste as defined in
38 G.S. 130A-290 in or upon water in a manner that results in medical waste entering
39 waters or lands of the State; and shall not exceed fifty thousand dollars (\$50,000) per
40 day for a second or further violation involving the disposal of medical waste as defined
41 in G.S. 130A-290 in or upon water in a manner that results in medical waste entering
42 waters or lands of the State. The penalty shall not exceed twenty-five thousand dollars
43 (\$25,000) per day for a violation involving a voluntary remedial action implemented
44 pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to

1 G.S. 130A-310.12(b). If a person fails to pay a civil penalty within 60 days after the
2 final agency decision or court order has been served on the violator, the Secretary of
3 Environment and Natural Resources shall request the Attorney General to institute a
4 civil action in the superior court of any county in which the violator resides or has his or
5 its principal place of business to recover the amount of the assessment. Such civil
6 actions must be filed within three years of the date the final agency decision or court
7 order was served on the violator."

8 **SECTION 5.** G.S. 130A-22(c) reads as rewritten:

9 "(c) The Secretary of Environment and Natural Resources may impose an
10 administrative penalty on a person who willfully violates Article 11 of this Chapter,
11 rules adopted by the Commission pursuant to Article 11 or any condition imposed upon
12 a permit issued under Article 11. An administrative penalty may not be imposed upon a
13 person who establishes that neither the site nor the system may be improved or a new
14 system installed so as to comply with Article 11 of this Chapter. Each day of a
15 continuing violation shall constitute a separate violation. The penalty shall not exceed
16 ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00) per day per violation in the case of
17 a wastewater collection, treatment and disposal system with a design daily flow of no
18 more than 480 gallons or in the case of any system serving a single one-family dwelling.
19 The penalty shall not exceed ~~three hundred dollars (\$300.00)~~ five thousand dollars
20 (\$5,000) per day per violation in the case of a wastewater collection, treatment and
21 disposal system with a design daily flow of more than 480 gallons which does not serve
22 a single one-family dwelling."

23 **SECTION 6.** G.S. 130A-26.2 reads as rewritten:

24 "**§ 130A-26.2. Penalty for false reporting under Article 9-9 and Article 10.**

25 Any person who knowingly makes any false statement, representation, or
26 certification in any application, record, report, plan, or other document filed or required
27 to be maintained under Article 9 or Article 10 of this Chapter or rules adopted under
28 Article 9 or Article 10 of this Chapter; or who knowingly makes a false statement of a
29 material fact in a rule-making proceeding or contested case under Article 9 or Article 10
30 of this Chapter; or who falsifies, tampers with, or knowingly renders inaccurate any
31 recording or monitoring device or method required to be operated or maintained under
32 Article 9 or Article 10 of this Chapter or rules adopted under Article 9 or Article 10 of
33 this Chapter is guilty of a Class 2 misdemeanor. The maximum fine that may be
34 imposed for an offense under this section is ten thousand dollars (\$10,000)."

35 **SECTION 7.** Part 1 of Article 21 of Chapter 143 of the General Statutes is
36 amended by adding a new section to read:

37 "**§ 143-215.6F. Enforcement procedures: administrative orders.**

38 (a) The Secretary may issue an administrative order directing any person who
39 has committed a violation described in G.S. 143-215.6A to do any of the following:

40 (1) Attend an environmental education course.

41 (2) Publish notice of the violation.

42 (3) Perform community service related to protection or restoration of the
43 environment and natural resources.

1 (b) The Secretary may issue an administrative order pursuant to this section in
2 addition to any other action or proceeding under this Part.

3 (c) The Secretary shall serve a copy of the administrative order and the specific
4 reasons for issuing the administrative order by registered or certified mail, or by any
5 means authorized by G.S. 1A-1, Rule 4. A contested case petition shall be filed within
6 30 days of receipt of the order.

7 (d) A person may comply with an administrative order issued pursuant to this
8 section by attending an environmental education or community service program offered
9 by the Department or a program certified by the Department. The Secretary may
10 establish minimum standards for certification of environmental education or community
11 service programs.

12 (e) The Department may charge a fee, not to exceed one hundred dollars
13 (\$100.00), to compensate for the reasonable cost of attending any environmental
14 education course or community service program offered by the Department.

15 (f) The Secretary may assess a civil penalty for failure to comply with an order
16 issued pursuant to this section as provided in G.S. 143-215.6A."

17 **SECTION 8.** The Department of Environment and Natural Resources, in
18 consultation with the North Carolina School Boards Association, shall develop and
19 implement a pilot program to begin no later than October 1, 2005, and to expire April 1,
20 2008, to determine the amount and retain the actual costs of collecting civil penalties,
21 fines, and forfeitures assessed by the Department and by commissions organized under
22 the Department to improve the assessment and collection of civil penalties, fines, and
23 forfeitures. The clear proceeds of all civil penalties, fines, and forfeitures that are
24 collected by the Department and payable to the counties for the support of public
25 schools pursuant to Article IX, Section 7 of the Constitution of North Carolina shall be
26 remitted to the Office of State Budget and Management by the officer having custody of
27 the funds within 10 days after the close of the calendar month in which the funds were
28 received or collected. During this pilot program, the clear proceeds of all civil
29 penalties, fines, and forfeitures collected by the Department shall be diminished only by
30 the actual costs of collecting the civil penalties, fines, and forfeitures. Actual costs may
31 include time spent on collection-related matters by personnel of the Department, legal
32 services related to collection provided by the Department of Justice, collection agency
33 fees, and court costs. The Department shall not enter into a contract that would require
34 the Department to pay more than twenty percent (20%) of the civil penalty, fine, or
35 forfeiture amount to a collection agency as a fee for collection of civil penalties, fines,
36 and forfeitures. Additional items may be included in costs by agreement of the
37 Department and the School Boards Association. Costs shall be itemized in an
38 accounting to be provided when the funds are remitted by the Department.

39 **SECTION 9.** The Department of Environment and Natural Resources shall
40 submit an interim report on the civil penalty, fine, and forfeiture collection pilot
41 program no later than March 1, 2007, and shall submit a final report no later than April
42 1, 2008, to the Environmental Review Commission, the Fiscal Research Division of the
43 North Carolina General Assembly, and the North Carolina School Boards Association.
44 The Department shall report the total amount of civil penalties, fines, and forfeitures

1 collected, the amount paid to the counties in support of public schools, and the effect of
2 the pilot program on collection of civil penalties, fines, and forfeitures by the
3 Department.

4 **SECTION 10.** Sections 1 through 7 of this act become effective December
5 1, 2005, and apply to violations and offenses committed on or after that date. Sections 8
6 through 10 of this act are effective when it becomes law.