

§ 143-215.114A. Enforcement procedures: civil penalties.

(a) A civil penalty of not more than twenty-five thousand dollars (\$25,000) may be assessed by the Secretary against any person who:

- (1) Violates any classification, standard or limitation established pursuant to G.S. 143-215.107.
- (2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
- (3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.110.
- (4) Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or Parts 1 or 7 of Article 21 of this Chapter.
- (5) Violates a rule of the Commission or a local governing body implementing this Article or Parts 1 or 7 of Article 21.
- (6) Violates the offenses set out in G.S. 143-215.114B.
- (7) Violates the emissions limitations set out in G.S. 143-215.107D.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed twenty-five thousand dollars (\$25,000) per day for so long as the violation continues.

(b1) The Secretary may assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) per day for a violation of the emissions limitations set out in G.S. 143-215.107D as provided in this subsection. If at the end of any calendar year, an investor-owned public utility has violated an emissions limitation set out in G.S. 143-215.107D, the violation shall be considered to be continuous from the day that the collective emissions first exceeded the emissions limitation set out in G.S. 143-215.107D through the end of the calendar year and the Secretary may assess a separate civil penalty for each day.

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

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

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

(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests

the assessment as provided in subdivision (4) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (5) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(g) Repealed by Session Laws 1996, Second Extra Session c. 18, s. 27.34(f).

(h) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 821, s. 6; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 19, s. 53; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 545, ss. 4-6; 1987, c. 748, s. 2; c. 827, ss. 154, 212; 1989, c. 135, s. 8; 1989 (Reg. Sess., 1990), c. 1036, s. 8; c. 1045, s. 4; 1991, c. 552, s. 4; c. 725, s. 7; 1991 (Reg. Sess., 1992), c. 890, s. 18; 1996, 2nd Ex. Sess., c. 18, s. 27.34(f); 1997-496, s. 7; 1998-215, s. 73; 2002-4, ss. 4, 5; 2002-165, s. 1.12; 2007-296, s. 1.)