

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE BILL 2249

Short Title: Clarify EMC Civil Penalty Powers.

(Public)

Sponsors: Representative DeVane.

Referred to: Basic Resources.

June 1, 1990

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE AND CLARIFY THE CIVIL PENALTY POWERS OF THE ENVIRONMENTAL MANAGEMENT COMMISSION AND TO ESTABLISH PROCEDURES FOR THE REMISSION OF CIVIL PENALTY ASSESSMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-282 reads as rewritten:

"§ 143B-282. Environmental Management Commission – creation; powers and duties.

There is hereby created the Environmental Management Commission of the Department of Environment, Health, and Natural Resources with the power and duty to promulgate rules and regulations to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

(1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have the following powers and duties:

- a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water pollution;
b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds responsible for causing or contributing to any pollution of water

- 1 within such watershed or pollution of the air within the area for
2 which standards have been established;
- 3 c. To conduct and direct that investigations be conducted pursuant
4 to G.S. 143-215.3 and G.S. 143-215.108(b)(5);
- 5 d. To conduct public hearings, institute actions in superior court,
6 and agree upon or enter into settlements, all pursuant to G.S.
7 143-215.3;
- 8 e. To direct the investigation of any killing of fish and wildlife
9 pursuant to G.S. 143-215.3;
- 10 f. To consult with any person proposing to construct, install, or
11 acquire an air or water pollution source pursuant to G.S. 143-
12 215.3 and G.S. 143-215.111;
- 13 g. To encourage local government units to handle air pollution
14 problems and to provide technical and consultative assistance
15 pursuant to G.S. 143-215.3 and G.S. 143-215.112;
- 16 h. To review and have general oversight and supervision over
17 local air pollution control programs pursuant to G.S. 143-215.3
18 and G.S. 143-215.112;
- 19 i. To declare an emergency when it finds a generalized dangerous
20 condition of water or air pollution pursuant to G.S. 143-215.3;
- 21 j. To render advice and assistance to local government regarding
22 floodways pursuant to G.S. 143-215.56;
- 23 k. To declare and delineate and modify capacity use areas
24 pursuant to G.S. 143-215.13;
- 25 l. To grant permits for water use within capacity use areas
26 pursuant to G.S. 143-215.15;
- 27 m. To direct that investigations be conducted when necessary to
28 carry out duties regarding capacity use areas pursuant to G.S.
29 143-215.19;
- 30 n. To approve, disapprove and approve subject to conditions all
31 applications for dam construction pursuant to G.S. 143-215.28;
32 to require construction progress reports pursuant to G.S. 143-
33 215.29;
- 34 o. To halt dam construction pursuant to G.S. 143-215.29;
- 35 p. To grant final approval of dam construction work pursuant to
36 G.S. 143-215.30;
- 37 q. To have jurisdiction and supervision over the maintenance and
38 operation of dams pursuant to G.S. 143-215.31;
- 39 r. To direct the inspection of dams pursuant to G.S. 143-215.32;
- 40 s. To modify or revoke any final action previously taken by the
41 Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107;
42 and
- 43 t. To have jurisdiction and supervision over oil pollution pursuant
44 to Article 21A of Chapter 143.

- 1 (2) The Environmental Management Commission shall adopt rules:
2 a. For air quality standards, emission control standards and
3 classifications for air contaminant sources pursuant to G.S. 143-
4 215.107;
5 b. For water quality standards and classifications pursuant to G.S.
6 143-214.1 and G.S. 143-215;
7 c. To implement water and air quality reporting pursuant to G.S.
8 143-215.68;
9 d. To be applied in capacity use areas pursuant to G.S. 143-
10 215.14;
11 e. To implement the issuance of permits for water use within
12 capacity use areas pursuant to G.S. 143-215.20;
13 f. Repealed by Session Laws 1983, c. 222, s. 3, effective April 25,
14 1983;
15 g. For the protection of the land and the waters over which this
16 State has jurisdiction from pollution by oil, oil products and oil
17 by-products pursuant to Article 21A of Chapter 143.
18 h. Governing underground tanks used for the storage of hazardous
19 substances or oil pursuant to Article 21 or Article 21A of
20 Chapter 143 of the General Statutes.
- 21 (3) The Commission is authorized ~~and empowered~~ to make such ~~rules and~~
22 ~~regulations, rules,~~ not inconsistent with the laws of this State, as may be
23 required by the federal government for grants-in-aid for water and air
24 resources purposes which may be made available to the State by the
25 federal government. This section is to be liberally construed in order
26 that the State and its citizens may benefit from such grants-in-aid.
- 27 (4) The Commission shall make rules ~~and regulations~~ consistent with the
28 provisions of this Chapter. All rules ~~and regulations~~ adopted by the
29 Commission shall be enforced by the Department of Environment,
30 Health, and Natural Resources.
- 31 (5) The Environmental Management Commission shall have the power to
32 adopt ~~regulations~~ rules with respect to any State laws administered
33 under its jurisdiction so as to accept evidence of compliance with
34 corresponding federal law or regulation in lieu of a State permit, or
35 otherwise modify a requirement for a State permit, upon findings by
36 the Commission, and after public hearings, that there are:
37 a. Similar and corresponding or more restrictive federal laws or
38 regulations which also require an applicant to obtain a federal
39 permit based upon the same general standards or more
40 restrictive standards as the State laws and ~~regulations~~ rules
41 require; and
42 b. That the enforcement of the State laws and ~~regulations~~ rules
43 would require the applicant to also obtain a State permit in
44 addition to the required federal permit; and

- 1 c. That the enforcement of the State laws and ~~regulations~~ rules
2 would be a duplication of effort on the part of the applicant; and
3 d. Such duplication of State and federal permit requirements
4 would result in an unreasonable burden not only on the
5 applicant, but also on the citizens and resources of the State."

6 Sec. 2. Part 4 of Article 7 of Chapter 143B of the General Statutes is amended
7 by adding a new section to read:

8 "**§ 143B-282.1. Environmental Management Commission – quasi-judicial powers;
9 procedures.**

10 (a) With respect to those matters within its jurisdiction, the Environmental
11 Management Commission shall exercise quasi-judicial powers in accordance with the
12 provisions of Chapter 150B of the General Statutes. This section and any rules adopted
13 by the Environmental Management Commission shall govern such proceedings:

- 14 (1) Exceptions to recommended decisions in contested cases shall be filed
15 with the Secretary within 30 days of the receipt by the Secretary of the
16 official record from the Office of Administrative Hearings, unless
17 additional time is allowed by the chairman of the Commission.
18 (2) Oral arguments by the parties may be allowed by the chairman of the
19 Commission upon request of the parties.
20 (3) Deliberations of the Commission shall be conducted in its public
21 meeting unless the Commission determines that consultation with its
22 counsel should be held in an executive session pursuant to G.S. 143-
23 318.11.

24 (b) The final agency decision in contested cases that arise from civil penalty
25 assessments shall be made by the Commission. In the evaluation of each violation, the
26 Commission shall recognize that the natural resources of the State are harmed whenever
27 standards or limitations established to protect them are violated; harm occurs whether it
28 can be immediately observed through damaged resources or is incremental, or
29 cumulative, with no damage that can be immediately observed or documented.
30 Penalties up to the maximum authorized may be based on any one or combination of the
31 following factors:

- 32 (1) The degree and extent of harm to the natural resources of the State, to
33 the public health, or to private property resulting from the violation;
34 (2) The duration and gravity of the violation;
35 (3) The effect on ground or surface water quantity or quality or on air
36 quality;
37 (4) The cost of rectifying the damage;
38 (5) The amount of money saved by noncompliance;
39 (6) Whether the violation was committed willfully or intentionally;
40 (7) The prior record of the violator in complying or failing to comply with
41 programs over which the Environmental Management Commission has
42 regulatory authority; and
43 (8) The cost to the State of the enforcement procedures.

1 (c) The chairman shall appoint a Committee on Civil Penalty Remissions from
 2 the members of the Commission who meet the qualifications set out in G.S. 143B-
 3 283(c). Remission requests shall be decided by the Committee. In determining whether
 4 a remission request will be approved, the Committee shall consider the recommendation
 5 of the Secretary and the following factors:

6 (1) Whether one or more of the civil penalty assessment factors in
 7 subsection (b) of this section were wrongly applied to the detriment of
 8 the petitioner;

9 (2) Whether the violator promptly abated continuing environmental
 10 damage resulting from the violation;

11 (3) Whether the violation was inadvertent or a result of an accident;

12 (4) Whether the violator had been assessed civil penalties for any previous
 13 violations;

14 (5) Whether payment of the civil penalty will prevent payment for the
 15 remaining necessary remedial actions.

16 (d) The Committee on Civil Penalty Remissions may remit the entire amount of
 17 the penalty only when factors (4) and (5) set out in subsection (c) of this section are
 18 established.

19 (e) If any civil penalty has not been paid within 30 days after the final agency
 20 decision or court order has been served on the violator, the Secretary of Environment,
 21 Health, and Natural Resources shall request the Attorney General to institute a civil
 22 action in the Superior Court of Wake County, or any county in which the violator
 23 resides or has his or its principal place of business, to recover the amount of the
 24 assessment.

25 (f) As used in this section, 'Secretary' means the Secretary of Environment,
 26 Health, and Natural Resources. The Secretary may delegate his powers and duties
 27 under this section to the Director of the Division of Environmental Management of the
 28 Department of Environment, Health, and Natural Resources."

29 Sec. 3. G.S. 143-215.6(a) reads as rewritten:

30 "(a) Civil Penalties. –

31 (1) A civil penalty of not more than ten thousand dollars (\$10,000) may be
 32 assessed by the ~~Commission~~ Secretary against any person who:

33 a. Violates any classification, standard, ~~limitation~~ limitation, or
 34 management practice established pursuant to G.S. 143-214.1,
 35 143-214.2, or 143-215.

36 b. Is required but fails to apply for or to secure a permit required
 37 by G.S. 143-215.1, or who violates or fails to act in accordance
 38 with the terms, conditions, or requirements of such permit.

39 c. Violates or fails to act in accordance with the terms, conditions,
 40 or requirements of any special order or other appropriate
 41 document issued pursuant to G.S. 143-215.2.

42 d. Fails to file, submit, or make available, as the case may be, any
 43 documents, ~~data~~ data, or reports required by this Article or G.S.
 44 143-355(k) relating to water use information.

- 1 e. Refuses access to the Commission or its duly designated
2 representative to any premises for the purpose of conducting a
3 lawful inspection provided for in this Article.
4 f. Violates a rule of the Commission implementing this Part or
5 G.S. 143-355(k).
6 g. Violates or fails to act in accordance with the statewide
7 minimum water supply watershed management requirements
8 adopted pursuant to G.S. 143-214.5, whether enforced by the
9 Commission or a local government.

10 (2) If any action or failure to act for which a penalty may be assessed
11 under this subsection is continuous, the ~~Commission~~ Secretary may
12 assess a penalty not to exceed ten thousand dollars (\$10,000) per day
13 for so long as the violation continues, unless otherwise stipulated.

14 (3) In determining the amount of the penalty the ~~Commission~~ Secretary
15 shall consider the ~~degree and extent of harm caused by the violation and~~
16 ~~the cost of rectifying the damage factors set out in G.S. 143B-282.1(b).~~
17 The procedures set out in G.S. 143B-282.1 shall apply to civil penalty
18 assessments that are presented to the Commission for final agency
19 decision.

20 (4) ~~The Commission may assess the penalties provided for in this~~
21 ~~subsection. Any person assessed shall be notified of the assessment by~~
22 ~~registered or certified mail, and the notice shall specify the reasons for~~
23 ~~the assessment. The Secretary shall notify any person assessed a civil~~
24 ~~penalty of the assessment and the specific reasons therefor by~~
25 ~~registered or certified mail, or by any means authorized by G.S. 1A-1,~~
26 ~~Rule 4. If the person assessed fails to pay the amount of the~~
27 ~~assessment to the Department within 30 days after receipt of notice, or~~
28 ~~such longer period, not to exceed 180 days, as the Commission may~~
29 ~~specify, the Commission may institute a civil action in the superior~~
30 ~~court of the county in which the violation occurred or, in the discretion~~
31 ~~of the Commission, in the superior court of the county in which the~~
32 ~~person assessed resides or has his or its principal place of business, to~~
33 ~~recover the amount of the assessment. Contested case petitions shall be~~
34 ~~filed within 30 days of receipt of the notice of assessment.~~

35 (5) Consistent with G.S. 143B-282.1, A a civil penalty of not more than
36 ten thousand dollars (\$10,000) per month may be assessed by the
37 Commission against any local government which fails to adopt or
38 enforce a water supply watershed protection program as required by
39 G.S. 143-214.5. No such penalty shall be imposed against a local
40 government until the Commission has assumed the responsibility for
41 administering and enforcing the local water supply watershed
42 protection program. Civil penalties shall be imposed pursuant to a
43 uniform schedule adopted by the Commission. The schedule of civil
44 penalties shall be based on acreage and other relevant cost factors and

1 shall be designed to recoup the costs of administration and
2 enforcement.

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

15 (7) If any civil penalty has not been paid within 30 days after the final
16 agency decision or court order has been served on the violator, the
17 Secretary shall request the Attorney General to institute a civil action
18 in the Superior Court of Wake County, or any county in which the
19 violator resides or has his or its principal place of business, to recover
20 the amount of the assessment.

21 (8) The Secretary may delegate his powers and duties under this section to
22 the Director of the Division of Environmental Management of the
23 Department."

24 Sec. 4. G.S. 143-215.17(b) reads as rewritten:

25 "(b) Civil Penalties. –

26 (1) ~~The Commission~~ Secretary may assess a civil penalty of not less than
27 one hundred dollars (\$100.00) nor more than two hundred fifty dollars
28 (\$250.00) against any person who violates any provisions of, or any
29 order issued pursuant to this Part, or who violates a rule of the
30 Commission implementing this Part.

31 (2) If any action or failure to act for which a penalty may be assessed
32 under this Part is willful, the ~~Commission~~ Secretary may assess a
33 penalty not to exceed two hundred fifty dollars (\$250.00) per day for
34 each day of violation.

35 (3) In determining the amount of the penalty the ~~Commission~~ Secretary
36 shall consider the ~~degree and extent of harm caused by violation, the~~
37 ~~duration of the violation, the effect on ground or surface water quantity~~
38 ~~or quality, and whether the violation was intentional or inadvertent~~
39 factors set out in G.S. 143B-282.1(b). The procedures set out in G.S.
40 143B-282.1 shall apply to civil penalty assessments that are presented
41 to the Commission for final agency decision.

42 (4) ~~Any person assessed shall be notified of the assessment by registered~~
43 ~~or certified mail, and the notice shall specify the reasons for the~~
44 ~~assessment.~~ The Secretary shall notify any person assessed a civil

1 penalty of the assessment and the specific reasons therefor by
2 registered or certified mail, or by any means authorized by G.S. 1A-1,
3 Rule 4. If the person assessed fails to pay the amount of the
4 assessment to the Department within 30 days after receipt of notice,
5 the Commission may request the Attorney General to institute a civil
6 action in the superior court of the county or counties in which the
7 person assessed resides or has his or its principal place of business, to
8 recover the amount of the assessment. Contested case petitions shall
9 be filed within 30 days of receipt of the notice of assessment.

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

22 (6) If any civil penalty has not been paid within 30 days after the final
23 agency decision or court order has been served on the violator, the
24 Secretary shall request the Attorney General to institute a civil action
25 in the Superior Court of Wake County, or any county in which the
26 violator resides or has his or its principal place of business, to recover
27 the amount of the assessment.

28 (7) The Secretary may delegate his powers and duties under this section to
29 the Director of the Division of Environmental Management of the
30 Department."

31 Sec. 5. G.S. 143-215.36(b) reads as rewritten:

32 "(b) Civil Penalties. –

33 (1) ~~The Commission~~ Secretary may assess a civil penalty of not less than
34 one hundred dollars (\$100.00) nor more than two hundred fifty dollars
35 (\$250.00) against any person who violates any provisions of this Part,
36 a rule implementing this Part, or an order issued under this Part.

37 (2) If any action or failure to act for which a penalty may be assessed
38 under this Part is willful, the ~~Commission~~ Secretary may assess a
39 penalty not to exceed two hundred fifty dollars (\$250.00) per day for
40 each day of violation.

41 (3) In determining the amount of the penalty, the ~~Commission~~ Secretary
42 shall consider the ~~degree and extent of harm caused by the violation and~~
43 ~~the cost of rectifying the damage.~~ factors set out in G.S. 143B-282.1(b).
44 The procedures set out in G.S. 143B-282.1 shall apply to civil penalty

- 1 assessments that are presented to the Commission for final agency
2 decision.
- 3 (4) Any person assessed shall be notified of the assessment by registered
4 or certified mail, and the notice shall specify the reasons for the
5 assessment.—The Secretary shall notify any person assessed a civil
6 penalty of the assessment and the specific reasons therefor by
7 registered or certified mail, or by any means authorized by G.S. 1A-1,
8 Rule 4. Contested case petitions shall be filed within 30 days of
9 receipt of the notice of assessment.
- 10 (5) Requests for remission of civil penalties shall be filed with the
11 Secretary. Remission requests shall not be considered unless made
12 within 30 days of receipt of the notice of assessment. Remission
13 requests must be accompanied by a waiver of the right to a contested
14 case hearing pursuant to Chapter 150B and a stipulation of the facts on
15 which the assessment was based. Consistent with the limitations in
16 G.S. 143B-282.1(c) and (d), remission requests may be resolved by the
17 Secretary and the violator. If the Secretary and the violator are unable
18 to resolve the request, the Secretary shall deliver remission requests
19 and his recommended action to the Committee on Civil Penalty
20 Remissions of the Environmental Management Commission appointed
21 pursuant to G.S. 143B-282.1(c).
- 22 (6) If any civil penalty has not been paid within 30 days after the final
23 agency decision or court order has been served on the violator, the
24 Secretary shall request the Attorney General to institute a civil action
25 in the Superior Court of Wake County, or any county in which the
26 violator resides or has his or its principal place of business, to recover
27 the amount of the assessment.
- 28 (7) The Secretary may delegate his powers and duties under this section to
29 the Director of the Division of Environmental Management of the
30 Department."

31 Sec. 6. G.S. 143B-215.91(a) reads as rewritten:

32 "(a) Civil Penalties. – Any person who intentionally or negligently discharges oil
33 or other hazardous substances, or knowingly causes or permits the discharge of oil in
34 violation of this Part or fails to report a discharge as required by G.S. 143-215.85 or
35 who fails to comply with the requirements of G.S. 143-215.84(a) or orders issued by the
36 Commission as a result of violations thereof, shall incur, in addition to any other penalty
37 provided by law, a penalty in an amount not to exceed five thousand dollars (\$5,000) for
38 every such violation, the amount to be determined by the ~~Commission~~ Secretary after
39 taking into consideration the ~~gravity of the violation, the previous record of the violator in~~
40 ~~complying or failing to comply with the provisions of this Part as well as G.S. 143-215.1,~~
41 factors set out in G.S. 143B-282.1(b), the amount expended by the violator in
42 complying with the provisions of G.S. 143-215.84, and the estimated damages
43 attributed to the violator under G.S. 143-215.90, and such other considerations as the
44 Commission deems appropriate. G.S. 143-215.90. Every act or omission which causes,

1 aids or abets a violation of this section shall be considered a violation under the
2 provisions of this section and subject to the penalty herein provided. The procedures set
3 out in G.S. 143-215.6 and G.S. 143B-282.1 shall apply to civil penalties assessed under
4 this section. The penalty herein provided for shall become due and payable when the
5 person incurring the penalty receives a notice in writing from the Commission
6 describing the violation with reasonable particularity and advising such person that the
7 penalty is due. A person may contest a penalty by filing a petition for a contested case
8 under G.S. 150B-23 within 30 days after receiving notice of the penalty. ~~If a person fails~~
9 ~~to pay a penalty assessed against him, the Department shall refer the matter to the Attorney~~
10 ~~General for collection.~~ If any civil penalty has not been paid within 30 days after the final
11 agency decision or court order has been served on the violator, the Secretary shall
12 request the Attorney General to institute a civil action in the Superior Court of Wake
13 County, or any county in which the violator resides or has his or its principal place of
14 business, to recover the amount of the assessment. Notification received pursuant to
15 this subsection or information obtained by the exploitation of such notification shall not
16 be used against any person in any criminal case, except as prosecution for perjury or for
17 giving a false statement."

18 Sec. 7. G.S. 143-215.102(a) reads as rewritten:

19 "(a) Civil Penalty. – Any person who violates any provision of this Part, or any rule,
20 regulation or order made pursuant to this Part, shall incur, in addition to any other
21 penalty provided by law, a civil penalty in an amount not to exceed ten thousand dollars
22 (\$10,000) for every such violation, the amount to be determined by the ~~Commission~~
23 ~~Secretary~~ after taking into consideration the ~~gravity of the violation, the previous record of~~
24 ~~the violator in complying or failing to comply with the provisions of this Article as well as G.S.~~
25 ~~143-215.1, and such other considerations as the Commission deems appropriate.~~ factors set
26 out in G.S. 143B-282.1(b). The procedures set out in G.S. 143-215.6 and G.S. 143B-
27 282.1 shall apply to civil penalties assessed under this section. The penalty herein
28 provided for shall become due and payable when the person incurring the penalty
29 receives a notice in writing from the Commission describing the violation with
30 reasonable particularity and advising such person that the penalty is due. A person may
31 contest a penalty by filing a petition for a contested case under G.S. 150B-23 within 30
32 days after receiving notice of the penalty. ~~If a person fails to pay a penalty assessed against~~
33 ~~him, the Department shall refer the matter to the Attorney General for collection.~~ If any civil
34 penalty has not been paid within 30 days after the final agency decision or court order
35 has been served on the violator, the Secretary shall request the Attorney General to
36 institute a civil action in the Superior Court of Wake County, or any county in which the
37 violator resides or has his or its principal place of business, to recover the amount of the
38 assessment. Any sums recovered under this subsection shall be payable to the Oil
39 Pollution Protection Fund as established by this Article."

40 Sec. 8. G.S. 143-215.114(a) reads as rewritten:

41 "(a) Civil Penalties. –

42 (1) A civil penalty of not more than five thousand dollars (\$5,000) may be
43 assessed by the Secretary against any person who:

- 1 a. Violates any classification, standard or limitation established
2 pursuant to G.S. 143-215.107;
- 3 b. Is required but fails to apply for or to secure a permit required
4 by G.S. 143-215.108 or who violates or fails to act in
5 accordance with the terms, conditions, or requirements of such
6 permit;
- 7 c. Violates or fails to act in accordance with the terms, conditions,
8 or requirements of any special order or other appropriate
9 document issued pursuant to G.S. 143-215.110;
- 10 d. Fails to file, submit, or make available, as the case may be, any
11 documents, data or reports required by this Article or Article 21
12 of this Chapter;
- 13 f. Violates a rule of the Commission or a local governing body
14 implementing this Article.
- 15 (2) Each day of continuing violation after written notification from the
16 ~~Commission~~ Secretary shall be considered a separate offense.
- 17 (3) In determining the amount of the penalty the ~~Commission~~ Secretary
18 shall consider the ~~degree and extent of harm caused by the violation,~~
19 ~~the cost of rectifying the damage, and the amount of money the~~
20 ~~violation saved by not having made the necessary expenditures to~~
21 ~~comply with the appropriate pollution control requirements.~~ factors set
22 out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1
23 shall apply to civil penalty assessments that are presented to the
24 Commission for final agency decision.
- 25 (4) ~~The Commission, or, if authorized by the Commission, the~~
26 ~~Department, may assess the penalties provided for in this subsection.~~
27 ~~Any person assessed shall be notified of the assessment by registered~~
28 ~~or certified mail, and the notice shall specify the reasons for the~~
29 ~~assessment. If the person assessed fails to pay the amount of the~~
30 ~~assessment to the Department within 30 days after receipt of notice, or~~
31 ~~such longer period, not to exceed 180 days, as the Commission may~~
32 ~~specify, the Commission may institute a civil action in the Superior~~
33 ~~Court of Wake County to recover the amount of the assessment. The~~
34 ~~Secretary shall notify any person assessed a civil penalty of the~~
35 ~~assessment and the specific reasons therefor by registered or certified~~
36 ~~mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested~~
37 ~~case petitions shall be filed within 30 days of receipt of the notice of~~
38 ~~assessment.~~ assessment.
- 39 (5) Requests for remission of civil penalties shall be filed with the
40 Secretary. Remission requests shall not be considered unless made
41 within 30 days of receipt of the notice of assessment. Remission
42 requests must be accompanied by a waiver of the right to a contested
43 case hearing pursuant to Chapter 150B and a stipulation of the facts on
44 which the assessment was based. Consistent with the limitations in

1 G.S. 143B-282.1(c) and (d), remission requests may be resolved by the
2 Secretary and the violator. If the Secretary and the violator are unable
3 to resolve the request, the Secretary shall deliver remission requests
4 and his recommended action to the Committee on Civil Penalty
5 Remissions of the Environmental Management Commission appointed
6 pursuant to G.S. 143B-282.1(c).

7 (6) If any civil penalty has not been paid within 30 days after the final
8 agency decision or court order has been served on the violator, the
9 Secretary shall request the Attorney General to institute a civil action
10 in the Superior Court of Wake County, or any county in which the
11 violator resides or has his or its principal place of business, to recover
12 the amount of the assessment.

13 (7) The Secretary may delegate his powers and duties under this section to
14 the Director of the Division of Environmental Management of the
15 Department."

16 Sec. 9. G.S. 143-214.2(b) reads as rewritten:

17 "(b) Civil Penalty.

18 (1) A civil penalty of not more than twenty-five thousand dollars
19 (\$25,000) may be assessed by the ~~Commission~~ Secretary against any
20 person for a first violation of this section and an additional penalty of
21 twenty-five thousand dollars (\$25,000) may be assessed for each day
22 during which the violation continues. A civil penalty of not more than
23 fifty thousand dollars (\$50,000) may be assessed by the ~~Commission~~
24 Secretary for a second or further violation and an additional penalty of
25 fifty thousand dollars (\$50,000) may be assessed for each day during
26 which the violation continues.

27 (2) ~~The Commission, or its delegate, shall determine the amount of the~~
28 ~~civil penalty proposed to be assessed under this section and shall notify~~
29 ~~the person to be assessed of the proposed assessment by registered or~~
30 ~~certified mail. The notice shall make written demand for payment~~
31 ~~upon the person responsible for the violation, and shall set forth in~~
32 ~~detail the violation for which the penalty has been invoked. The notice~~
33 ~~shall further set forth the opportunity for a contested case proceeding~~
34 ~~under Chapter 150B. The proposed penalty set forth in the notice~~
35 ~~issued by the Commission, or its delegate, shall become the final civil~~
36 ~~penalty unless it is increased or decreased by the Commission in the~~
37 ~~final agency decision of a contested case proceeding requested~~
38 ~~pursuant to Chapter 150B. If payment is not received or equitable~~
39 ~~settlement reached within 30 days after demand for payment is made,~~
40 ~~the Secretary shall refer the matter to the Attorney General for the~~
41 ~~institution of a civil action in the name of the State in the superior~~
42 ~~court of the county in which the discharge of waste or the damages to~~
43 ~~resources occurred or in Wake County if the discharge or resource~~
44 ~~damage occurs in the open waters of the Atlantic Ocean. In~~

1 determining the amount of the penalty the Secretary shall consider the
2 factors set out in G.S. 143B-282.1(b). The procedures set out in G.S.
3 143B-282.1 shall apply to civil penalty assessments that are presented
4 to the Commission for final agency decision.

5 (3) ~~In determining the amount of the penalty, the Commission, or its~~
6 ~~delegate, shall consider the degree and extent of harm caused by the~~
7 ~~violation, the cost of rectifying the damage, the amount of money the~~
8 ~~violation saved by his noncompliance, whether the violation was~~
9 ~~committed willfully, and the prior record of the violator in complying~~
10 ~~or failing to comply with this Article. The Secretary shall notify any~~
11 ~~person assessed a civil penalty of the assessment and the specific~~
12 ~~reasons therefor by registered or certified mail, or by any means~~
13 ~~authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be~~
14 ~~filed within 30 days of receipt of the notice of assessment.~~

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

27 (5) If any civil penalty has not been paid within 30 days after the final
28 agency decision or court order has been served on the violator, the
29 Secretary shall request the Attorney General to institute a civil action
30 in the Superior Court of Wake County, or any county in which the
31 violator resides or has his or its principal place of business, to recover
32 the amount of the assessment.

33 (6) The Secretary may delegate his powers and duties under this section to
34 the Director of the Division of Environmental Management of the
35 Department."

36 Sec. 10. G.S. 87-94 reads as rewritten:

37 **"§ 87-94. Civil penalties.**

38 (a) Any person who ~~violates, on or after January 1, 1986, violates~~ any provision of
39 this Article, or any order issued pursuant thereto, or any ~~adopted regulation promulgated~~
40 rule adopted thereunder, shall be subject to ~~an administrative, a~~ civil penalty of not more
41 than one hundred dollars (\$100.00) for each violation, as determined by the
42 ~~Environmental Management Commission. Secretary of Environment, Health, and Natural~~
43 Resources. Each day of a continuing violation shall be considered a separate offense.

1 No person shall be subject to a penalty who did not directly commit the violation or
2 cause it to be committed.

3 (b) No penalty shall be assessed until the person alleged to be in violation has
4 been:

5 (1) Notified of the violation in accordance with the notice provisions set
6 out in G.S. 87-91(a),

7 (2) Informed by said notice of remedial action, which if taken within 30
8 days from receipt of the notice, will effect compliance with this Article
9 and the regulations under it, and

10 (3) Warned by said notice that a civil penalty can be assessed for failure to
11 comply within the specified time.

12 (c) ~~In determining the amount of the penalty, the Commission penalty the~~
13 ~~Secretary shall consider the degree and extent of harm caused by the violation, the cost~~
14 ~~of rectifying the damage, the amount of money the violator saved by his~~
15 ~~noncompliance, whether or not the violation was committed willfully, and the prior~~
16 ~~record of the violator in complying or failing to comply with this Article. factors set out~~
17 ~~in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil~~
18 ~~penalty assessments that are presented to the Commission for final agency decision.~~

19 (d) ~~Any person assessed shall be notified of the assessment by registered or~~
20 ~~certified mail, or other means calculated to provide actual notice, and the notice shall~~
21 ~~specify the reasons for the assessment. If the person assessed fails to pay the amount of~~
22 ~~the assessment to the Department of Environment, Health, and Natural Resources, or~~
23 ~~fails to request an administrative hearing to contest such assessment, within 30 days~~
24 ~~after receipt of notice, the Commission may request the Attorney General to institute a~~
25 ~~civil action to recover the amount of the assessment in the superior court of the county~~
26 ~~in which the person assessed resides or has his or its principal place of business or in~~
27 ~~which the well is located. The Secretary shall notify any person assessed a civil penalty~~
28 ~~of the assessment and the specific reasons therefor by registered or certified mail, or by~~
29 ~~any means authorized by G.S. 1A-1, Rule 4.~~

30 (e) If any civil penalty has not been paid within 30 days after the final agency
31 decision or court order has been served on the violator, the Secretary shall request the
32 Attorney General to institute a civil action in the Superior Court of Wake County, or
33 any county in which the violator resides or has his or its principal place of business, to
34 recover the amount of the assessment.

35 (f) The Secretary of Environment, Health, and Natural Resources may delegate
36 his powers and duties under this section to the Director of the Division of
37 Environmental Management of the Department."

38 Sec. 11. This act shall become effective 1 October 1990.