

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1283
Committee Substitute Favorable 7/28/05

Short Title: Improve Environmental Enforcement.

(Public)

Sponsors:

Referred to:

April 19, 2005

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). A civil penalty may be assessed from the date for the first day of the violation. Each day of a continuing violation shall constitute a separate violation.~~ violation and for each day thereafter on which the violation continues. The maximum civil penalty that may be assessed for a violation is five thousand dollars (\$5,000) except that, in order to deter violations, a civil penalty of up to ten thousand dollars (\$10,000) may be assessed for the first day of a violation upon finding one or more of the following factors:

- a. The violation was knowing and willful.
- b. Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse.

- 1 c. Off-site sedimentation has caused severe damage to adjacent
2 land.
3 d. The land-disturbing activity is being conducted without an
4 approved plan."

5 **SECTION 2.** G.S. 113A-64 is amended by adding a new subsection to read:

6 "(c) A violation that is subject to an enforcement action under both this Article
7 and under Article 21 of Chapter 143 of the General Statutes may be enforced under the
8 provisions of either Article. An enforcement action may not be taken under both this
9 Article and Article 21 of Chapter 143 of the General Statutes for the same violation, but
10 separate violations at the same site may be enforced as provided by either applicable
11 Article."

12 **SECTION 3.** G.S. 113A-126(d) reads as rewritten:

- 13 "(d) (1) A civil penalty of not more than ~~two hundred fifty dollars (\$250.00)~~
14 one thousand dollars (\$1,000) for a minor development violation and
15 ~~two thousand five hundred dollars (\$2,500)~~ ten thousand dollars
16 (\$10,000) for a major development violation may be assessed by the
17 Commission against any person who:
18 a. Is required but fails to apply for or to secure a permit required
19 by G.S. 113A-118, or who violates or fails to act in accordance
20 with the terms, conditions, or requirements of such permit.
21 b. Fails to file, submit, or make available, as the case may be, any
22 documents, data or reports required by the Commission
23 pursuant to this Article.
24 c. Refuses access to the Commission or its duly designated
25 representative, who has sufficiently identified himself by
26 displaying official credentials, to any premises, not including
27 any occupied dwelling house or curtilage, for the purpose of
28 conducting any investigations provided for in this Article.
29 d. Violates a rule of the Commission implementing this Article.
30 (2) For each willful action or failure to act for which a penalty may be
31 assessed under this subsection, the Commission may consider each day
32 the action or inaction continues after notice is given of the violation as
33 a separate violation; a separate penalty may be assessed for each such
34 separate violation.
35 (3) ~~The Commission may assess the penalties provided for in this~~
36 ~~subsection.~~ The Commission shall notify a person who is assessed a
37 penalty or investigative costs by registered or certified mail. The notice
38 shall state the reasons for the penalty. A person may contest the
39 assessment of a penalty or investigative costs by filing a petition for a
40 contested case under G.S. 150B-23 within 20 days after receiving the
41 notice of assessment. If a person fails to pay a penalty, any civil
42 penalty or investigative cost assessed under this subsection, the
43 Commission shall refer the matter to the Attorney General for
44 collection. An action to collect a penalty must be filed within three

1 years after the date the final agency decision was served on the
 2 violator.

3 (4) In determining the amount of the ~~penalty~~civil penalty, the
 4 Commission shall consider ~~the degree and extent of harm caused by~~
 5 ~~the violation and the cost of rectifying the damage.~~all the following
 6 factors:

7 a. The degree and extent of harm, including, but not limited to,
 8 harm to the natural resources of the State, to the public health,
 9 or to private property resulting from the violation.

10 b. The duration and gravity of the violation.

11 c. The effect on water quality, coastal resources, or public trust
 12 uses.

13 d. The cost of rectifying the damage.

14 e. The amount of money saved by noncompliance.

15 f. Whether the violation was committed willfully or intentionally.

16 g. The prior record of the violator in complying or failing to
 17 comply with programs over which the Commission has
 18 regulatory authority.

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

20 (4a) The Commission may also assess a person who is assessed a civil
 21 penalty under this subsection the reasonable costs of any investigation,
 22 inspection, or monitoring that results in the assessment of the civil
 23 penalty. For a minor development violation, the amount of an
 24 assessment of investigative costs shall not exceed one-half of the
 25 amount of the civil penalty assessed or one thousand dollars (\$1,000),
 26 whichever is less. For a major development violation, the amount of an
 27 assessment of investigative costs shall not exceed one-half of the
 28 amount of the civil penalty assessed or two thousand five hundred
 29 dollars (\$2,500), whichever is less.

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

33 **SECTION 4.** G.S. 130A-18(a) reads as rewritten:

34 "(a) If a person ~~shall violate~~violates any provision of this ~~Chapter or the rules~~
 35 Chapter, any rule adopted by the Commission or rules Commission, any rule adopted by
 36 a local board of health-health, any order issued pursuant to this Chapter, or any order
 37 issued pursuant to rules adopted by the Commission, the Secretary or a local health
 38 director may institute an action for injunctive relief, irrespective of all other remedies at
 39 law, in the superior court of the county where the violation occurred or where a
 40 defendant resides."

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

42 "(a) The Secretary of Environment and Natural Resources may impose an
 43 administrative penalty on a person who violates Article 9 of this Chapter, rules adopted
 44 by the Commission pursuant to Article 9, or any order issued under Article 9. Each day

1 of a continuing violation shall constitute a separate violation. The penalty shall not
2 exceed ~~five-ten~~ thousand dollars (~~\$5,000~~)(~~\$10,000~~) per day in the case of a violation
3 involving nonhazardous waste. The penalty shall not exceed ~~twenty-five thousand~~
4 ~~dollars~~ (~~\$25,000~~) thirty-two thousand five hundred dollars (\$32,500) per day in the case
5 of a ~~first~~-violation involving hazardous ~~waste-waste~~, as defined in G.S. ~~130A-290 or~~
6 130A-290, or for a failure to make a determination whether a solid waste is a hazardous
7 waste. The penalty shall not exceed twenty-five thousand dollars (\$25,000) per day for a
8 first violation involving the disposal of medical waste as defined in G.S. 130A-290 in or
9 upon water in a manner that results in medical waste entering waters or lands of the
10 State; and shall not exceed fifty thousand dollars (\$50,000) per day for a second or
11 further violation involving the disposal of medical waste as defined in G.S. 130A-290 in
12 or upon water in a manner that results in medical waste entering waters or lands of the
13 State. The penalty shall not exceed twenty-five thousand dollars (\$25,000) per day for a
14 violation involving a voluntary remedial action implemented pursuant to
15 G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b).
16 If a person fails to pay a civil penalty within 60 days after the final agency decision or
17 court order has been served on the violator, the Secretary of Environment and Natural
18 Resources shall request the Attorney General to institute a civil action in the superior
19 court of any county in which the violator resides or has his or its principal place of
20 business to recover the amount of the assessment. Such civil actions must be filed
21 within three years of the date the final agency decision or court order was served on the
22 violator."

23 **SECTION 6.** G.S. 130A-22(c) reads as rewritten:

24 "(c) The Secretary of Environment and Natural Resources may impose an
25 administrative penalty on a person who willfully violates Article 11 of this Chapter,
26 rules adopted by the Commission pursuant to Article 11 or any condition imposed upon
27 a permit issued under Article 11. An administrative penalty may not be imposed upon a
28 person who establishes that neither the site nor the system may be improved or a new
29 system installed so as to comply with Article 11 of this Chapter. Each day of a
30 continuing violation shall constitute a separate violation. The penalty shall not exceed
31 ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00) per day per violation in the case of
32 a wastewater collection, treatment and disposal system with a design daily flow of no
33 more than 480 gallons or in the case of any system serving a single one-family dwelling.
34 The penalty shall not exceed ~~three hundred dollars (\$300.00)~~ five thousand dollars
35 (\$5,000) per day per violation in the case of a wastewater collection, treatment and
36 disposal system with a design daily flow of more than 480 gallons which does not serve
37 a single one-family dwelling."

38 **SECTION 7.** G.S. 130A-22 is amended by adding a new subsection to read:

39 "(j) The Secretary of Environment and Natural Resources may assess a person
40 who is assessed a civil penalty under this section the reasonable costs of any
41 investigation, inspection, or monitoring that results in the assessment of the civil
42 penalty."

43 **SECTION 8.** G.S. 130A-26.2 reads as rewritten:

1 **"§ 130A-26.2. Penalty for false reporting under ~~Article 9~~Articles 9 and 10 of this**
2 **Chapter.**

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

13 **SECTION 9.** Part 1 of Article 21 of Chapter 143 of the General Statutes is
14 amended by adding a new section to read:

15 **"§ 143-215.6F. Enforcement procedures: administrative orders.**

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

- 18 (1) Attend an environmental education course of up to four hours duration.
19 (2) Publish notice of the violation one time in a newspaper having general
20 circulation in the county where the violation occurred.
21 (3) Perform up to four hours of community service related to protection or
22 restoration of the environment and natural resources.

23 (b) The Secretary may issue an administrative order pursuant to this section
24 either in lieu of or in addition to any other action or proceeding under this Part.

25 (c) The Secretary shall serve a copy of the administrative order and the specific
26 reasons for issuing the administrative order by registered or certified mail or by any
27 means authorized by G.S. 1A-1, Rule 4. A contested case petition shall be filed within
28 30 days of receipt of the order.

29 (d) A person may comply with an administrative order issued pursuant to this
30 section by attending an environmental education or community service program offered
31 by the Department or a program certified by the Department. The Secretary may
32 establish minimum standards for certification of environmental education or community
33 service programs.

34 (e) The Department may charge a fee, not to exceed one hundred dollars
35 (\$100.00), to compensate for the reasonable cost of attending any environmental
36 education course or community service program offered by the Department.

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

39 (g) The Secretary may delegate the Secretary's powers and duties under this
40 section only to a Deputy Secretary, an Assistant Secretary, a Division Director, or a
41 Deputy Division Director."

42 **SECTION 10.** The Department of Environment and Natural Resources, in
43 consultation with the North Carolina School Boards Association, shall develop and
44 implement a pilot program to begin no later than 1 October 2005 and to expire 1 April

1 2008 to determine the amount and retain the actual costs of collecting civil penalties,
2 fines, and forfeitures assessed by the Department and by commissions organized under
3 the Department to improve the assessment and collection of civil penalties, fines, and
4 forfeitures. The clear proceeds of all civil penalties, fines, and forfeitures that are
5 collected by the Department and payable to the counties for the support of public
6 schools pursuant to Article IX, Section 7 of the Constitution of North Carolina shall be
7 remitted to the Office of State Budget and Management by the officer having custody of
8 the funds within 10 days after the close of the calendar month in which the funds were
9 received or collected. During this pilot program, the clear proceeds of all civil
10 penalties, fines, and forfeitures collected by the Department shall be diminished only by
11 the actual costs of collecting the civil penalties, fines, and forfeitures. Actual costs may
12 include time spent on collection-related matters by personnel of the Department, legal
13 services related to collection provided by the Department of Justice, collection agency
14 fees, and court costs. The Department shall not enter into a contract that would require
15 the Department to pay more than twenty percent (20%) of the civil penalty, fine, or
16 forfeiture amount to a collection agency as a fee for collection of civil penalties, fines,
17 and forfeitures. Additional items may be included in costs by agreement of the
18 Department and the North Carolina School Boards Association. Costs shall be itemized
19 in an accounting to be provided when the funds are remitted by the Department.

20 **SECTION 11.** The Department of Environment and Natural Resources shall
21 submit an interim report on the civil penalty, fine, and forfeiture collection pilot
22 program no later than 1 March 2007 and shall submit a final report no later than 1 April
23 2008 to the Environmental Review Commission, the Fiscal Research Division of the
24 North Carolina General Assembly, and the North Carolina School Boards Association.
25 The Department shall report the total amount of civil penalties, fines, and forfeitures
26 collected, the amount paid to the counties in support of public schools, and the effect of
27 the pilot program on collection of civil penalties, fines, and forfeitures by the
28 Department.

29 **SECTION 12.** Sections 1 through 9 of this act become effective 1 December
30 2005 and apply to violations and offenses committed on or after that date. Sections 10
31 through 12 of this act are effective when it becomes law.