

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

1

SENATE BILL 459

Short Title: Well Construction Civil Penalties.

(Public)

Sponsors: Senators Speed; Martin of Pitt, Martin of Guilford, Marvin, Parnell, Plexico, Raynor, and Tally.

Referred to: Environment and Natural Resources.

April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CIVIL PENALTIES WHICH MAY BE ASSESSED FOR VIOLATION OF THE WELL CONSTRUCTION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-94 reads as rewritten:

"§ 87-94. Civil penalties.

(a) ~~Any person who violates any provision of this Article, or any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a civil penalty of not more than one hundred dollars (\$100.00) for each violation, as determined by the Secretary of Environment, Health, and Natural Resources. Each day of a continuing violation shall be considered a separate offense. No person shall be subject to a penalty who did not directly commit the violation or cause it to be committed. Any person who violates any provision of this Article or any rule adopted or order issued pursuant to this Article may be assessed a civil penalty by the Secretary of Environment, Health, and Natural Resources. A civil penalty assessed under this section shall not exceed one thousand dollars (\$1,000) for the first violation occurring within the preceding 24 months, three thousand dollars (\$3,000) for a second such violation, five thousand dollars (\$5,000) for a third such violation, and ten thousand dollars (\$10,000) per violation for any subsequent violation. In addition, a civil penalty equal to the cost of any investigation by the Department which establishes that a violation of this Article or of any rule adopted or order issued pursuant to this Article has occurred may be assessed against the person responsible for the violation.~~

1 (b) ~~No penalty shall be assessed until the person alleged to be in violation has~~
2 ~~been:~~

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

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

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

10 No civil penalty shall be assessed until the person alleged to to be in violation has
11 been notified of the violation and informed of the necessary remedial action as provided
12 in G.S. 87-91. No civil penalty shall be assessed for a first violation where the violation
13 is corrected within 30 days of the receipt of the notice specified in this subsection.

14 (c) In determining the amount of the penalty the Secretary shall consider factors
15 set out in G.S. 143B-282.1(b). The procedures set out in G.S. ~~143-215.6~~ 143-215.6A
16 and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

17 (d) The Secretary shall notify any person assessed a civil penalty of the
18 assessment and the specific reasons therefor by registered or certified mail, or by any
19 means authorized by G.S. 1A-1, Rule 4.

20 (e) If any civil penalty has not been paid within 30 days after notice of
21 assessment has been served on the violator, the Secretary shall request the Attorney
22 General to institute a civil action in the Superior Court of any county in which the
23 violator resides or has his or its principal place of business to recover the amount of the
24 assessment, unless the violator contests the assessment or requests remission of the
25 assessment in whole or in part. If any civil penalty has not been paid within 30 days
26 after the final agency decision or court order has been served on the violator, the
27 Secretary shall request the Attorney General to institute a civil action in the Superior
28 Court of any county in which the violator resides or has his or its principal place of
29 business to recover the amount of the assessment.

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

33 Sec. 2. This act becomes effective 1 October 1991, and applies to violations
34 occurring on or after that date.