

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 868*
Committee Substitute Favorable 4/29/03

Short Title: Improve Environmental Enforcement.

(Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF VARIOUS ENVIRONMENTAL LAWS.

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)~~ twenty-five thousand dollars (\$25,000) for a major development violation may be assessed by the Commission against any person who:
- a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
 - b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.

1 c. Refuses access to the Commission or its duly designated
2 representative, who has sufficiently identified himself by
3 displaying official credentials, to any premises, not including
4 any occupied dwelling house or curtilage, for the purpose of
5 conducting any investigations provided for in this Article.

6 d. Violates a rule of the Commission implementing this Article.

7 (2) For each willful action or failure to act for which a penalty may be
8 assessed under this subsection, the Commission may consider each day
9 the action or inaction continues after notice is given of the violation as
10 a separate violation; a separate penalty may be assessed for each such
11 separate violation.

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

24 (4) In determining the amount of the ~~penalty~~ civil penalty, the
25 Commission shall consider the degree and extent of harm caused by
26 the violation and the cost of rectifying the damage.

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

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

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

41 "(a) If a person ~~shall violate~~ violates any provision of this ~~Chapter or the rules~~
42 Chapter, any rule adopted by the Commission or rules Commission, any rule adopted by
43 a local board of health or any order issued pursuant to this Chapter, the Secretary or a
44 local health director may institute an action for injunctive relief, irrespective of all other

1 remedies at law, in the superior court of the county where the violation occurred or
2 where a defendant resides."

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

4 "(a) The Secretary of Environment and Natural Resources may impose an
5 administrative penalty on a person who violates Article 9 of this Chapter, rules adopted
6 by the Commission pursuant to Article 9, or any order issued under Article 9. Each day
7 of a continuing violation shall constitute a separate violation. The penalty shall not
8 exceed ~~five-ten~~ thousand dollars (~~\$5,000~~)(~~\$10,000~~) per day in the case of a violation
9 involving nonhazardous waste. The penalty shall not exceed ~~twenty-five-thousand~~
10 ~~dollars~~ (~~\$25,000~~) twenty-seven thousand five hundred dollars (\$27,500) per day in the
11 case of a ~~first~~ violation involving hazardous ~~waste-waste~~, as defined in G.S. ~~130A-290~~
12 ~~or 130A-290~~, or for a failure to make a determination whether a solid waste is a
13 hazardous waste. The penalty shall not exceed twenty-five thousand dollars (\$25,000)
14 per day for a first violation involving the disposal of medical waste as defined in G.S.
15 130A-290 in or upon water in a manner that results in medical waste entering waters or
16 lands of the State; and shall not exceed fifty thousand dollars (\$50,000) per day for a
17 second or further violation involving the disposal of medical waste as defined in G.S.
18 130A-290 in or upon water in a manner that results in medical waste entering waters or
19 lands of the State. The penalty shall not exceed twenty-five thousand dollars (\$25,000)
20 per day for a violation involving a voluntary remedial action implemented pursuant to
21 G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b).
22 If a person fails to pay a civil penalty within 60 days after the final agency decision or
23 court order has been served on the violator, the Secretary of Environment and Natural
24 Resources shall request the Attorney General to institute a civil action in the superior
25 court of any county in which the violator resides or has his or its principal place of
26 business to recover the amount of the assessment. Such civil actions must be filed
27 within three years of the date the final agency decision or court order was served on the
28 violator."

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

30 "(c) The Secretary of Environment and Natural Resources may impose an
31 administrative penalty on a person who willfully violates Article 11 of this Chapter,
32 rules adopted by the Commission pursuant to Article 11 or any condition imposed upon
33 a permit issued under Article 11. An administrative penalty may not be imposed upon a
34 person who establishes that neither the site nor the system may be improved or a new
35 system installed so as to comply with Article 11 of this Chapter. Each day of a
36 continuing violation shall constitute a separate violation. The penalty shall not exceed
37 ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00) per day per violation in the case of
38 a wastewater collection, treatment and disposal system with a design daily flow of no
39 more than 480 gallons or in the case of any system serving a single one-family dwelling.
40 The penalty shall not exceed ~~three hundred dollars (\$300.00)~~ five thousand dollars
41 (\$5,000) per day per violation in the case of a wastewater collection, treatment and
42 disposal system with a design daily flow of more than 480 gallons which does not serve
43 a single one-family dwelling."

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

1 **"§ 130A-26.2. Penalty for false reporting under Article 9,9 and Article 10.**

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

12 **SECTION 7.** G.S. 115C-457.2 reads as rewritten:

13 **"§ 115C-457.2. Remittance of moneys to the Fund.**

14 The clear proceeds of all civil penalties and civil forfeitures that are collected by a
15 State agency and are payable to the County School Fund pursuant to Article IX, Section
16 7 of the Constitution shall be remitted to the Office of State Budget and Management by
17 the officer having custody of the funds within 10 days after the close of the calendar
18 month in which the revenues were received or collected. Notwithstanding any other law,
19 all funds which are civil penalties or civil forfeitures within the meaning of Article IX,
20 Section 7 of the Constitution shall be deposited in the Civil Penalty and Forfeiture Fund.
21 The clear proceeds of such funds include the full amount of all such penalties and
22 forfeitures collected under authority conferred by the State, diminished only by the
23 actual costs of ~~collection, not to exceed ten percent (10%) of the amount~~
24 ~~collected.~~collection."

25 **SECTION 8.** This act becomes effective 1 December 2003 and applies to
26 violations and offenses committed on or after that date.