

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1283
Committee Substitute Favorable 7/28/05
Committee Substitute #2 Favorable 8/22/05

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.

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

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

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

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

8 "(d) (1) A civil penalty of not more than ~~two hundred fifty dollars (\$250.00)~~
9 one thousand dollars (\$1,000) for a minor development violation and
10 ~~two thousand five hundred dollars (\$2,500)~~ ten thousand dollars
11 (\$10,000) for a major development violation may be assessed by the
12 Commission against any person who:

- 13 a. Is required but fails to apply for or to secure a permit required
14 by G.S. 113A-118, or who violates or fails to act in accordance
15 with the terms, conditions, or requirements of such permit.
16 b. Fails to file, submit, or make available, as the case may be, any
17 documents, data or reports required by the Commission
18 pursuant to this Article.
19 c. Refuses access to the Commission or its duly designated
20 representative, who has sufficiently identified himself by
21 displaying official credentials, to any premises, not including
22 any occupied dwelling house or curtilage, for the purpose of
23 conducting any investigations provided for in this Article.
24 d. Violates a rule of the Commission implementing this Article.

25 (2) For each willful action or failure to act for which a penalty may be
26 assessed under this subsection, the Commission may consider each day
27 the action or inaction continues after notice is given of the violation as
28 a separate violation; a separate penalty may be assessed for each such
29 separate violation.

30 (3) ~~The Commission may assess the penalties provided for in this~~
31 ~~subsection.~~ The Commission shall notify a person who is assessed a
32 penalty or investigative costs by registered or certified mail. The notice
33 shall state the reasons for the penalty. A person may contest the
34 assessment of a penalty or investigative costs by filing a petition for a
35 contested case under G.S. 150B-23 within 20 days after receiving the
36 notice of assessment. If a person fails to pay a penalty, any civil
37 penalty or investigative cost assessed under this subsection, the
38 Commission shall refer the matter to the Attorney General for
39 collection. An action to collect a penalty must be filed within three
40 years after the date the final agency decision was served on the
41 violation.

42 (4) In determining the amount of the ~~penalty~~ civil penalty, the
43 Commission shall consider ~~the degree and extent of harm caused by~~

1 ~~the violation and the cost of rectifying the damage.~~all the following
2 factors:

- 3 a. The degree and extent of harm, including, but not limited to,
4 harm to the natural resources of the State, to the public health,
5 or to private property resulting from the violation.
6 b. The duration and gravity of the violation.
7 c. The effect on water quality, coastal resources, or public trust
8 uses.
9 d. The cost of rectifying the damage.
10 e. The amount of money saved by noncompliance.
11 f. Whether the violation was committed willfully or intentionally.
12 g. The prior record of the violator in complying or failing to
13 comply with programs over which the Commission has
14 regulatory authority.
15 h. The cost to the State of the enforcement procedures.

16 (4a) The Commission may also assess a person who is assessed a civil
17 penalty under this subsection the reasonable costs of any investigation,
18 inspection, or monitoring that results in the assessment of the civil
19 penalty. For a minor development violation, the amount of an
20 assessment of investigative costs shall not exceed one-half of the
21 amount of the civil penalty assessed or one thousand dollars (\$1,000),
22 whichever is less. For a major development violation, the amount of an
23 assessment of investigative costs shall not exceed one-half of the
24 amount of the civil penalty assessed or two thousand five hundred
25 dollars (\$2,500), whichever is less.

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

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

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

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

38 "(a) The Secretary of Environment and Natural Resources may impose an
39 administrative penalty on a person who violates Article 9 of this Chapter, rules adopted
40 by the Commission pursuant to Article 9, or any order issued under Article 9. Each day
41 of a continuing violation shall constitute a separate violation. The penalty shall not
42 exceed ~~five~~ten thousand dollars ~~(\$5,000)~~(\$10,000) per day in the case of a violation
43 involving nonhazardous waste. The penalty shall not exceed ~~twenty five thousand~~
44 dollars (\$25,000) ~~thirty-two thousand five hundred dollars (\$32,500)~~ per day in the case

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

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

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

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

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

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

40 "**§ 130A-26.2. Penalty for false reporting under Article 9, Articles 9 and 10 of this**
41 **Chapter.**

42 Any person who knowingly makes any false statement, representation, or
43 certification in any application, record, report, plan, or other document filed or required
44 to be maintained under Article 9 or Article 10 of this Chapter or rules adopted under

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

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

10 **"§ 143-215.6F. Enforcement procedures: administrative consent orders.**

11 (a) A person who is subject to assessment of a civil penalty under
12 G.S. 143-215.6A may request that the Secretary enter into an administrative consent
13 order as provided by this section. The Secretary may enter into an administrative
14 consent order with the person in lieu of or in addition to any other enforcement action or
15 proceeding under this Part. Whether to enter into an administrative consent order is both
16 voluntary on the part of the person subject to a civil penalty assessment and at the
17 discretion of the Secretary. If the person and the Secretary agree, an administrative
18 consent order may direct the person to do any of the following:

19 (1) Attend an environmental education course of up to four hours duration.

20 (2) Perform up to four hours of community service related to protection or
21 restoration of the environment or natural resources.

22 (3) Publish notice of the violation one time in a newspaper having general
23 circulation in the county where the violation occurred.

24 (b) If a person who enters into an administrative consent order fails to comply
25 with the order, the person may be assessed a civil penalty as provided in
26 G.S. 143-215.6A. In addition, an administrative consent order shall provide that a
27 person who fails to comply with the order is subject to any enforcement action or
28 proceeding provided for by this Part for the original violation.

29 (c) A person may comply with the environmental education component of an
30 administrative consent order by attending an environmental education course offered or
31 certified by the Department. A person may comply with the community service
32 component of an administrative consent order by participating in a community service
33 program offered or certified by the Department. The Secretary shall establish minimum
34 standards for certification of environmental education courses and community service
35 programs.

36 (d) The Department may charge a fee, not to exceed one hundred dollars
37 (\$100.00) per person, to compensate the Department for the reasonable cost of
38 providing any environmental education course or community service program offered
39 by the Department.

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

43 **SECTION 10.** G.S. 143-215.6A(a)(3) reads as rewritten:

1 "(3) Violates or fails to act in accordance with the terms, conditions, or
2 requirements of any special order or other appropriate document issued
3 pursuant to ~~G.S. 143-215.2~~, 143-215.2 or G.S. 143-215.6F."

4 **SECTION 11.** This act becomes effective 1 December 2005 and applies to
5 violations and offenses committed on or after that date.