

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1646*
Senate Finance Committee Substitute Adopted 7/11/07

Short Title: Increase Penalties for Air Pollution.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES FOR VIOLATIONS OF LAWS TO PROTECT AIR QUALITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.114A reads as rewritten:

"§ 143-215.114A. Enforcement procedures: civil penalties.

(a) A civil penalty of not more than ~~ten~~twenty-five thousand dollars ~~(\$10,000)~~(\$25,000) may be assessed by the Secretary against any person who:

- (1) Violates any classification, standard or limitation established pursuant to G.S. 143-215.107.
- (2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
- (3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.110.
- (4) Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or Parts 1 or 7 of Article 21 of this Chapter.
- (5) Violates a rule of the Commission or a local governing body implementing this Article or Parts 1 or 7 of Article 21.
- (6) Violates the offenses set out in G.S. 143-215.114B.
- (7) Violates the emissions limitations set out in G.S. 143-215.107D.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed ~~ten~~twenty-five thousand dollars ~~(\$10,000)~~(\$25,000) per day for so long as the violation continues.

(b1) The Secretary may assess a civil penalty of not more than ~~ten~~twenty-five thousand dollars ~~(\$10,000)~~(\$25,000) per day for a violation of the emissions limitations set out in G.S. 143-215.107D as provided in this subsection. If at the end of any

1 calendar year, an investor-owned public utility has violated an emissions limitation set
2 out in G.S. 143-215.107D, the violation shall be considered to be continuous from the
3 day that the collective emissions first exceeded the emissions limitation set out in
4 G.S. 143-215.107D through the end of the calendar year and the Secretary may assess a
5 separate civil penalty for each day.

6 (c) In determining the amount of the penalty the Secretary shall consider the
7 factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall
8 apply to civil penalty assessments that are presented to the Commission for final agency
9 decision.

10 (d) The Secretary shall notify any person assessed a civil penalty of the
11 assessment and the specific reasons therefor by registered or certified mail, or by any
12 means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30
13 days of receipt of the notice of assessment.

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

24 (f) If any civil penalty has not been paid within 30 days after notice of
25 assessment has been served on the violator, the Secretary shall request the Attorney
26 General to institute a civil action in the Superior Court of any county in which the
27 violator resides or has his or its principal place of business to recover the amount of the
28 assessment, unless the violator contests the assessment as provided in subdivision (4) of
29 this subsection, or requests remission of the assessment in whole or in part as provided
30 in subdivision (5) of this subsection. If any civil penalty has not been paid within 30
31 days after the final agency decision or court order has been served on the violator, the
32 Secretary shall request the Attorney General to institute a civil action in the Superior
33 Court of any county in which the violator resides or has his or its principal place of
34 business to recover the amount of the assessment. Such civil actions must be filed
35 within three years of the date the final agency decision or court order was served on the
36 violator.

37 (g) Repealed by Session Laws 1996, Second Extra Session c. 18, s. 27.34(f).

38 (h) The clear proceeds of penalties provided for in this section shall be remitted
39 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

40 **SECTION 2.** This act becomes effective October 1, 2007, and applies to
41 offenses committed on or after that date.