

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 728  
HOUSE BILL 155

AN ACT TO AMEND THE WELL CONSTRUCTION ACT, G.S. 87-83 ET SEQ., TO  
PROVIDE FOR CIVIL PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-92 is rewritten to read as follows:

"§ 87-92. **Hearings; appeals.**—Any person wishing to contest a penalty, permit decision, or other order issued under this Article shall be entitled to an administrative hearing and judicial review conducted according to the procedures established in Article 3 and Article 4 of Chapter 150A of the General Statutes."

Sec. 2. G.S. 87-93 is hereby repealed.

Sec. 3. G.S. 87-94 is rewritten to read as follows:

"Civil Penalties.

- (1) Any person who violates, on or after the effective date of this act, any provision of this Article, or any order issued pursuant thereto, or any adopted regulation promulgated thereunder, shall be subject to an administrative, civil penalty of not more than one hundred dollars (\$100.00) for each violation, as determined by the Environmental Management Commission. 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.
- (2) No penalty shall be assessed until the person alleged to be in violation has been:
  - a. notified of the violation in accordance with the notice provisions set out in G.S. 87- 91(a),
  - b. informed by said notice of remedial action, which if taken within 30 days from receipt of the notice, will effect compliance with this Article and the regulations under it, and
  - c. warned by said notice that a civil penalty can be assessed for failure to comply within the specified time.
- (3) In determining the amount of the penalty, the Commission shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by his compliance, whether or not the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Article.

- (4) Any person assessed shall be notified of the assessment by registered or certified mail, or other means calculated to provide actual notice, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural Resources and Community Development, or fails to request an administrative hearing to contest such assessment, within 30 days after receipt of notice, the Commission may request the Attorney General to institute a civil action to recover the amount of the assessment in the superior court of the county in which the person assessed resides or has his or its principal place of business or in which the well is located."

Sec. 4. G.S. 87-87 is amended as follows:

- (1) by deleting the word "and" at the end of subdivision (3);

- (2) by deleting the period at the end of the subdivision (4) and substituting  
"; and"; and

- (3) by adding a new subdivision (5) to read:

"(5) Neither adopt nor enforce any rule or regulation that concerns the civil liability of an owner to a well driller for any costs or expenses of drilling and installing a well for the owner."

Sec. 5. This act shall become effective January 1, 1986.

In the General Assembly read three times and ratified, this the 12th day of July, 1985.