§ 74-64. Penalties for violations.

(a) Civil Penalties.

(1) a. A civil penalty of not more than five thousand dollars ($5,000) may be assessed by the Department against any person who fails to secure a valid operating permit prior to engaging in mining, as required by G.S. 74-50. No civil penalty shall be assessed until the operator has been given notice of the violation pursuant to G.S. 74-60. Each day of a continuing violation shall constitute a separate violation and a civil penalty of not more than five thousand dollars ($5,000) per day may be assessed for each day the violation continues.

b. Any permitted operator who violates any of the provisions of this Article, any rules adopted under this Article, or any of the terms and conditions of the mining permit shall be subject to a civil penalty of not more than five hundred dollars ($500.00). Each day of a continuing violation shall constitute a separate violation. Prior to the assessment of any civil penalty, written notice of the violation shall be given. The notice shall describe the violation with reasonable particularity, shall specify a time period reasonably calculated to permit the violator to complete actions to correct the violation, and shall state that failure to correct the violation within that period may result in the assessment of a civil penalty.

c. In determining the amount of the penalty, the Department 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 the noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Article.

(2) The Department shall determine the amount of the civil penalty to be assessed pursuant to G.S. 74-64(a)(1) and shall give notice to the operator of the assessment of the civil penalty pursuant to G.S. 74-60, or by any means authorized by G.S. 1A-1, Rule 4. The notice shall set forth in detail the violation or violations for which the civil penalty has been assessed. The operator may appeal the assessment of any civil penalty assessed pursuant to this section in accordance with the procedures set forth in G.S. 74-61.

(3) The notice of assessment shall direct the violator to pay the assessment or contest the assessment as provided in G.S. 74-61. If the violator does not pay the assessment within 30 days after receipt of the notice of assessment or within 30 days after receipt of the final agency decision, where the assessment has been contested, the Department shall request the Attorney General to institute a civil action in superior court to recover the amount of the penalty. A civil action under this section shall be filed within three years of the date the final agency decision was served on the violator.

(4) The clear proceeds of civil penalties collected pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(5) In addition to other remedies, the Department may request the Attorney General to institute any appropriate action or proceedings to prevent, restrain, correct or abate any violation of this Article or any rules adopted under this Article, or the obstruction, hampering, or interference with an

authorized representative of the Department while the representative is carrying out official duties pursuant to this Article.

(b) Criminal Penalties. – In addition to other penalties provided by this Article, any operator who engages in mining in willful violation of the provisions of this Article or of any rules promulgated hereunder or who willfully misrepresents any fact in any action taken pursuant to this Article or willfully gives false information in any application or report required by this Article shall be guilty of a Class 3 misdemeanor and, upon conviction thereof, shall only be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) for each offense. Each day of continued violation after written notification shall be considered a separate offense. (1971, c. 545, s. 19; 1979, c. 252, s. 2; 1981, c. 787, ss. 7, 8; 1987, c. 246, s. 1; c. 827, s. 85; 1989 (Reg. Sess., 1990), c. 1024, s. 16; 1993, c. 539, s. 555; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 568, s. 10; 1998-215, s. 42.)