

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2249
Committee Substitute Favorable 6/14/90
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Short Title: Clarify EMC Civil Penalty Powers.

(Public)

Sponsors:

Referred to:

June 1, 1990

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE AND CLARIFY THE CIVIL PENALTY POWERS OF THE ENVIRONMENTAL MANAGEMENT COMMISSION AND TO ESTABLISH PROCEDURES FOR THE REMISSION OF CIVIL PENALTY ASSESSMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-282 reads as rewritten:

"§ 143B-282. Environmental Management Commission – creation; powers and duties.

There is hereby created the Environmental Management Commission of the Department of Environment, Health, and Natural Resources with the power and duty to promulgate rules ~~and regulations~~ to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

(1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have the following powers and duties:

- a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water pollution;
- b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds

- 1 responsible for causing or contributing to any pollution of water
2 within such watershed or pollution of the air within the area for
3 which standards have been established;
- 4 c. To conduct and direct that investigations be conducted pursuant
5 to G.S. 143-215.3 and G.S. 143-215.108(b)(5);
- 6 d. To conduct public hearings, institute actions in superior court,
7 and agree upon or enter into settlements, all pursuant to G.S.
8 143-215.3;
- 9 e. To direct the investigation of any killing of fish and wildlife
10 pursuant to G.S. 143-215.3;
- 11 f. To consult with any person proposing to construct, install, or
12 acquire an air or water pollution source pursuant to G.S. 143-
13 215.3 and G.S. 143-215.111;
- 14 g. To encourage local government units to handle air pollution
15 problems and to provide technical and consultative assistance
16 pursuant to G.S. 143-215.3 and G.S. 143-215.112;
- 17 h. To review and have general oversight and supervision over
18 local air pollution control programs pursuant to G.S. 143-215.3
19 and G.S. 143-215.112;
- 20 i. To declare an emergency when it finds a generalized dangerous
21 condition of water or air pollution pursuant to G.S. 143-215.3;
- 22 j. To render advice and assistance to local government regarding
23 floodways pursuant to G.S. 143-215.56;
- 24 k. To declare and delineate and modify capacity use areas
25 pursuant to G.S. 143-215.13;
- 26 l. To grant permits for water use within capacity use areas
27 pursuant to G.S. 143-215.15;
- 28 m. To direct that investigations be conducted when necessary to
29 carry out duties regarding capacity use areas pursuant to G.S.
30 143-215.19;
- 31 n. To approve, disapprove and approve subject to conditions all
32 applications for dam construction pursuant to G.S. 143-215.28;
33 to require construction progress reports pursuant to G.S. 143-
34 215.29;
- 35 o. To halt dam construction pursuant to G.S. 143-215.29;
- 36 p. To grant final approval of dam construction work pursuant to
37 G.S. 143-215.30;
- 38 q. To have jurisdiction and supervision over the maintenance and
39 operation of dams pursuant to G.S. 143-215.31;
- 40 r. To direct the inspection of dams pursuant to G.S. 143-215.32;
- 41 s. To modify or revoke any final action previously taken by the
42 Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107;
43 and

- 1 t. To have jurisdiction and supervision over oil pollution pursuant
2 to Article 21A of Chapter 143.
- 3 (2) The Environmental Management Commission shall adopt rules:
4 a. For air quality standards, emission control standards and
5 classifications for air contaminant sources pursuant to G.S. 143-
6 215.107;
7 b. For water quality standards and classifications pursuant to G.S.
8 143-214.1 and G.S. 143-215;
9 c. To implement water and air quality reporting pursuant to G.S.
10 143-215.68;
11 d. To be applied in capacity use areas pursuant to G.S. 143-
12 215.14;
13 e. To implement the issuance of permits for water use within
14 capacity use areas pursuant to G.S. 143-215.20;
15 f. Repealed by Session Laws 1983, c. 222, s. 3, effective April 25,
16 1983;
17 g. For the protection of the land and the waters over which this
18 State has jurisdiction from pollution by oil, oil products and oil
19 by-products pursuant to Article 21A of Chapter 143.
20 h. Governing underground tanks used for the storage of hazardous
21 substances or oil pursuant to Article 21 or Article 21A of
22 Chapter 143 of the General Statutes.
- 23 (3) The Commission is authorized ~~and empowered~~ to make such ~~rules and~~
24 ~~regulations, rules,~~ not inconsistent with the laws of this State, as may be
25 required by the federal government for grants-in-aid for water and air
26 resources purposes which may be made available to the State by the
27 federal government. This section is to be liberally construed in order
28 that the State and its citizens may benefit from such grants-in-aid.
- 29 (4) The Commission shall make rules ~~and regulations~~ consistent with the
30 provisions of this Chapter. All rules ~~and regulations~~ adopted by the
31 Commission shall be enforced by the Department of Environment,
32 Health, and Natural Resources.
- 33 (5) The Environmental Management Commission shall have the power to
34 adopt ~~regulations~~ rules with respect to any State laws administered
35 under its jurisdiction so as to accept evidence of compliance with
36 corresponding federal law or regulation in lieu of a State permit, or
37 otherwise modify a requirement for a State permit, upon findings by
38 the Commission, and after public hearings, that there are:
39 a. Similar and corresponding or more restrictive federal laws or
40 regulations which also require an applicant to obtain a federal
41 permit based upon the same general standards or more
42 restrictive standards as the State laws and ~~regulations~~ rules
43 require; and

- 1 b. That the enforcement of the State laws and ~~regulations~~ rules
2 would require the applicant to also obtain a State permit in
3 addition to the required federal permit; and
4 c. That the enforcement of the State laws and ~~regulations~~ rules
5 would be a duplication of effort on the part of the applicant; and
6 d. Such duplication of State and federal permit requirements
7 would result in an unreasonable burden not only on the
8 applicant, but also on the citizens and resources of the State."

9 Sec. 2. Part 4 of Article 7 of Chapter 143B of the General Statutes is amended
10 by adding a new section to read:

11 "**§ 143B-282.1. Environmental Management Commission – quasi-judicial powers;**
12 **procedures.**

13 (a) With respect to those matters within its jurisdiction, the Environmental
14 Management Commission shall exercise quasi-judicial powers in accordance with the
15 provisions of Chapter 150B of the General Statutes. This section and any rules adopted
16 by the Environmental Management Commission shall govern such proceedings:

- 17 (1) Exceptions to recommended decisions in contested cases shall be filed
18 with the Secretary within 30 days of the receipt by the Secretary of the
19 official record from the Office of Administrative Hearings, unless
20 additional time is allowed by the chairman of the Commission.
21 (2) Oral arguments by the parties may be allowed by the chairman of the
22 Commission upon request of the parties.
23 (3) Deliberations of the Commission shall be conducted in its public
24 meeting unless the Commission determines that consultation with its
25 counsel should be held in an executive session pursuant to G.S. 143-
26 318.11.

27 (b) The final agency decision in contested cases that arise from civil penalty
28 assessments shall be made by the Commission. In the evaluation of each violation, the
29 Commission shall recognize that the natural resources of the State are harmed whenever
30 standards or limitations established to protect them are violated; harm occurs whether it
31 can be immediately observed through damaged resources or is incremental, or
32 cumulative, with no damage that can be immediately observed or documented.
33 Penalties up to the maximum authorized may be based on any one or combination of the
34 following factors:

- 35 (1) The degree and extent of harm to the natural resources of the State, to
36 the public health, or to private property resulting from the violation;
37 (2) The duration and gravity of the violation;
38 (3) The effect on ground or surface water quantity or quality or on air
39 quality;
40 (4) The cost of rectifying the damage;
41 (5) The amount of money saved by noncompliance;
42 (6) Whether the violation was committed willfully or intentionally;

1 (7) The prior record of the violator in complying or failing to comply with
2 programs over which the Environmental Management Commission has
3 regulatory authority; and

4 (8) The cost to the State of the enforcement procedures.

5 (c) The chairman shall appoint a Committee on Civil Penalty Remissions from
6 the members of the Commission who meet the qualifications set out in G.S. 143B-
7 283(c). Remission requests shall be decided by the Committee. In determining whether
8 a remission request will be approved, the Committee shall consider the recommendation
9 of the Secretary and the following factors:

10 (1) Whether one or more of the civil penalty assessment factors in
11 subsection (b) of this section were wrongly applied to the detriment of
12 the petitioner;

13 (2) Whether the violator promptly abated continuing environmental
14 damage resulting from the violation;

15 (3) Whether the violation was inadvertent or a result of an accident;

16 (4) Whether the violator had been assessed civil penalties for any previous
17 violations;

18 (5) Whether payment of the civil penalty will prevent payment for the
19 remaining necessary remedial actions.

20 (d) The Committee on Civil Penalty Remissions may remit the entire amount of
21 the penalty only when the violator has not been assessed civil penalties for previous
22 violations, and when payment of the civil penalty will prevent payment for the
23 remaining necessary remedial actions.

24 (e) If any civil penalty has not been paid within 30 days after the final agency
25 decision or court order has been served on the violator, the Secretary of Environment,
26 Health, and Natural Resources shall request the Attorney General to institute a civil
27 action in any county in which the violator resides or has his or its principal place of
28 business, to recover the amount of the assessment.

29 (f) As used in this section, 'Secretary' means the Secretary of Environment,
30 Health, and Natural Resources. The Secretary may delegate his powers and duties
31 under this section to the Director of the Division of Environmental Management of the
32 Department of Environment, Health, and Natural Resources."

33 Sec. 3. G.S. 143-215.6(a) reads as rewritten:

34 "(a) Civil Penalties. –

35 (1) A civil penalty of not more than ten thousand dollars (\$10,000) may be
36 assessed by the ~~Commission~~ Secretary against any person who:

37 a. Violates any classification, standard, ~~limitation~~ limitation, or
38 management practice established pursuant to G.S. 143-214.1,
39 143-214.2, or 143-215.

40 b. Is required but fails to apply for or to secure a permit required
41 by G.S. 143-215.1, or who violates or fails to act in accordance
42 with the terms, conditions, or requirements of such permit.

- 1 c. Violates or fails to act in accordance with the terms, conditions,
2 or requirements of any special order or other appropriate
3 document issued pursuant to G.S. 143-215.2.
- 4 d. Fails to file, submit, or make available, as the case may be, any
5 documents, ~~data~~data, or reports required by this Article or G.S.
6 143-355(k) relating to water use information.
- 7 e. Refuses access to the Commission or its duly designated
8 representative to any premises for the purpose of conducting a
9 lawful inspection provided for in this Article.
- 10 f. Violates a rule of the Commission implementing this Part or
11 G.S. 143-355(k).
- 12 g. Violates or fails to act in accordance with the statewide
13 minimum water supply watershed management requirements
14 adopted pursuant to G.S. 143-214.5, whether enforced by the
15 Commission or a local government.
- 16 (2) If any action or failure to act for which a penalty may be assessed
17 under this subsection is continuous, the ~~Commission~~Secretary may
18 assess a penalty not to exceed ten thousand dollars (\$10,000) per day
19 for so long as the violation continues, unless otherwise stipulated.
- 20 (3) In determining the amount of the penalty the ~~Commission~~Secretary
21 shall consider the ~~degree and extent of harm caused by the violation and~~
22 ~~the cost of rectifying the damage~~factors set out in G.S. 143B-282.1(b).
23 The procedures set out in G.S. 143B-282.1 shall apply to civil penalty
24 assessments that are presented to the Commission for final agency
25 decision.
- 26 (4) ~~The Commission may assess the penalties provided for in this~~
27 ~~subsection. Any person assessed shall be notified of the assessment by~~
28 ~~registered or certified mail, and the notice shall specify the reasons for~~
29 ~~the assessment. The Secretary shall notify any person assessed a civil~~
30 ~~penalty of the assessment and the specific reasons therefor by~~
31 ~~registered or certified mail, or by any means authorized by G.S. 1A-1,~~
32 ~~Rule 4. If the person assessed fails to pay the amount of the~~
33 ~~assessment to the Department within 30 days after receipt of notice, or~~
34 ~~such longer period, not to exceed 180 days, as the Commission may~~
35 ~~specify, the Commission may institute a civil action in the superior~~
36 ~~court of the county in which the violation occurred or, in the discretion~~
37 ~~of the Commission, in the superior court of the county in which the~~
38 ~~person assessed resides or has his or its principal place of business, to~~
39 ~~recover the amount of the assessment. Contested case petitions shall be~~
40 ~~filed within 30 days of receipt of the notice of assessment.~~
- 41 (5) Consistent with G.S. 143B-282.1, Aa civil penalty of not more than
42 ten thousand dollars (\$10,000) per month may be assessed by the
43 Commission against any local government which fails to adopt or
44 enforce a water supply watershed protection program as required by

1 G.S. 143-214.5. No such penalty shall be imposed against a local
 2 government until the Commission has assumed the responsibility for
 3 administering and enforcing the local water supply watershed
 4 protection program. Civil penalties shall be imposed pursuant to a
 5 uniform schedule adopted by the Commission. The schedule of civil
 6 penalties shall be based on acreage and other relevant cost factors and
 7 shall be designed to recoup the costs of administration and
 8 enforcement.

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

21 (7) If any civil penalty has not been paid within 30 days after notice of
 22 assessment has been served on the violator, the Secretary shall request
 23 the Attorney General to institute a civil action in the Superior Court of
 24 Wake County, or any county in which the violator resides or has his or
 25 its principal place of business, to recover the amount of the
 26 assessment, unless the violator contests the assessment as provided in
 27 subdivision (4) of this subsection, or requests remission of the
 28 assessment in whole or in part as provided in subdivision (6) of this
 29 subsection. If any civil penalty has not been paid within 30 days after
 30 the final agency decision or court order has been served on the
 31 violator, the Secretary shall request the Attorney General to institute a
 32 civil action in any county in which the violator resides or has his or its
 33 principal place of business, to recover the amount of the assessment.

34 (8) The Secretary may delegate his powers and duties under this section to
 35 the Director of the Division of Environmental Management of the
 36 Department."

37 Sec. 4. G.S. 143-215.17(b) reads as rewritten:

38 "(b) Civil Penalties. –

39 (1) ~~The Commission~~ Secretary may assess a civil penalty of not less than
 40 one hundred dollars (\$100.00) nor more than two hundred fifty dollars
 41 (\$250.00) against any person who violates any provisions of, or any
 42 order issued pursuant to this Part, or who violates a rule of the
 43 Commission implementing this Part.

- 1 (2) If any action or failure to act for which a penalty may be assessed
2 under this Part is willful, the ~~Commission~~ Secretary may assess a
3 penalty not to exceed two hundred fifty dollars (\$250.00) per day for
4 each day of violation.
- 5 (3) In determining the amount of the penalty the ~~Commission~~ Secretary
6 shall consider the ~~degree and extent of harm caused by violation, the~~
7 ~~duration of the violation, the effect on ground or surface water quantity~~
8 ~~or quality, and whether the violation was intentional or inadvertent~~
9 ~~factors set out in G.S. 143B-282.1(b).~~ The procedures set out in G.S.
10 143B-282.1 shall apply to civil penalty assessments that are presented
11 to the Commission for final agency decision.
- 12 (4) ~~Any person assessed shall be notified of the assessment by registered~~
13 ~~or certified mail, and the notice shall specify the reasons for the~~
14 ~~assessment.—The Secretary shall notify any person assessed a civil~~
15 ~~penalty of the assessment and the specific reasons therefor by~~
16 ~~registered or certified mail, or by any means authorized by G.S. 1A-1,~~
17 ~~Rule 4. If the person assessed fails to pay the amount of the~~
18 ~~assessment to the Department within 30 days after receipt of notice,~~
19 ~~the Commission may request the Attorney General to institute a civil~~
20 ~~action in the superior court of the county or counties in which the~~
21 ~~person assessed resides or has his or its principal place of business, to~~
22 ~~recover the amount of the assessment.—Contested case petitions shall~~
23 ~~be filed within 30 days of receipt of the notice of assessment.~~
- 24 (5) Requests for remission of civil penalties shall be filed with the
25 Secretary. Remission requests shall not be considered unless made
26 within 30 days of receipt of the notice of assessment. Remission
27 requests must be accompanied by a waiver of the right to a contested
28 case hearing pursuant to Chapter 150B and a stipulation of the facts on
29 which the assessment was based. Consistent with the limitations in
30 G.S. 143B-282.1(c) and (d), remission requests may be resolved by the
31 Secretary and the violator. If the Secretary and the violator are unable
32 to resolve the request, the Secretary shall deliver remission requests
33 and his recommended action to the Committee on Civil Penalty
34 Remissions of the Environmental Management Commission appointed
35 pursuant to G.S. 143B-282.1(c).
- 36 (6) If any civil penalty has not been paid within 30 days after notice of
37 assessment has been served on the violator, the Secretary shall request
38 the Attorney General to institute a civil action in any county in which
39 the violator resides or has his or its principal place of business, to
40 recover the amount of the assessment, unless the violator contests the
41 assessment as provided in subdivision (4) of this subsection, or
42 requests remission of the assessment in whole or in part as provided in
43 subdivision (5) of this subsection. If any civil penalty has not been
44 paid within 30 days after the final agency decision or court order has

1 been served on the violator, the Secretary shall request the Attorney
2 General to institute a civil action in any county in which the violator
3 resides or has his or its principal place of business, to recover the
4 amount of the assessment.

5 (7) The Secretary may delegate his powers and duties under this section to
6 the Director of the Division of Environmental Management of the
7 Department."

8 Sec. 5. G.S. 143-215.36(b) reads as rewritten:

9 "(b) Civil Penalties. –

10 (1) ~~The Commission~~Secretary may assess a civil penalty of not less than
11 one hundred dollars (\$100.00) nor more than two hundred fifty dollars
12 (\$250.00) against any person who violates any provisions of this Part,
13 a rule implementing this Part, or an order issued under this Part.

14 (2) If any action or failure to act for which a penalty may be assessed
15 under this Part is willful, the ~~Commission~~Secretary may assess a
16 penalty not to exceed two hundred fifty dollars (\$250.00) per day for
17 each day of violation.

18 (3) In determining the amount of the penalty, the ~~Commission~~Secretary
19 shall consider the ~~degree and extent of harm caused by the violation and~~
20 ~~the cost of rectifying the damage.~~factors set out in G.S. 143B-282.1(b).
21 The procedures set out in G.S. 143B-282.1 shall apply to civil penalty
22 assessments that are presented to the Commission for final agency
23 decision.

24 (4) ~~Any person assessed shall be notified of the assessment by registered~~
25 ~~or certified mail, and the notice shall specify the reasons for the~~
26 ~~assessment.~~The Secretary shall notify any person assessed a civil
27 penalty of the assessment and the specific reasons therefor by
28 registered or certified mail, or by any means authorized by G.S. 1A-1,
29 Rule 4. Contested case petitions shall be filed within 30 days of
30 receipt of the notice of assessment.

31 (5) Requests for remission of civil penalties shall be filed with the
32 Secretary. Remission requests shall not be considered unless made
33 within 30 days of receipt of the notice of assessment. Remission
34 requests must be accompanied by a waiver of the right to a contested
35 case hearing pursuant to Chapter 150B and a stipulation of the facts on
36 which the assessment was based. Consistent with the limitations in
37 G.S. 143B-282.1(c) and (d), remission requests may be resolved by the
38 Secretary and the violator. If the Secretary and the violator are unable
39 to resolve the request, the Secretary shall deliver remission requests
40 and his recommended action to the Committee on Civil Penalty
41 Remissions of the Environmental Management Commission appointed
42 pursuant to G.S. 143B-282.1(c).

43 (6) If any civil penalty has not been paid within 30 days after notice of
44 assessment has been served on the violator, the Secretary shall request

1 the Attorney General to institute a civil action in any county in which
2 the violator resides or has his or its principal place of business, to
3 recover the amount of the assessment, unless the violator contests the
4 assessment as provided in subdivision (4) of this subsection, or
5 requests remission of the assessment in whole or in part as provided in
6 subdivision (5) of this subsection. If any civil penalty has not been
7 paid within 30 days after the final agency decision or court order has
8 been served on the violator, the Secretary shall request the Attorney
9 General to institute a civil action in any county in which the violator
10 resides or has his or its principal place of business, to recover the
11 amount of the assessment.

12 (7) The Secretary may delegate his powers and duties under this section to
13 the Director of the Division of Environmental Management of the
14 Department."

15 Sec. 6. G.S. 143-215.91(a) reads as rewritten:

16 "(a) Civil Penalties. – Any person who intentionally or negligently discharges oil
17 or other hazardous substances, or knowingly causes or permits the discharge of oil in
18 violation of this Part or fails to report a discharge as required by G.S. 143-215.85 or
19 who fails to comply with the requirements of G.S. 143-215.84(a) or orders issued by the
20 Commission as a result of violations thereof, shall incur, in addition to any other penalty
21 provided by law, a penalty in an amount not to exceed five thousand dollars (\$5,000) for
22 every such violation, the amount to be determined by the ~~Commission~~ Secretary after
23 taking into consideration the ~~gravity of the violation, the previous record of the violator in~~
24 ~~complying or failing to comply with the provisions of this Part as well as G.S. 143-215.1,~~
25 factors set out in G.S. 143B-282.1(b), the amount expended by the violator in
26 complying with the provisions of G.S. 143-215.84, and the estimated damages
27 attributed to the violator under G.S. 143-215.90, and such other considerations as the
28 ~~Commission deems appropriate. G.S. 143-215.90.~~ Every act or omission which causes,
29 aids or abets a violation of this section shall be considered a violation under the
30 provisions of this section and subject to the penalty herein provided. The procedures set
31 out in G.S. 143-215.6 and G.S. 143B-282.1 shall apply to civil penalties assessed under
32 this section. The penalty herein provided for shall become due and payable when the
33 person incurring the penalty receives a notice in writing from the Commission
34 describing the violation with reasonable particularity and advising such person that the
35 penalty is due. A person may contest a penalty by filing a petition for a contested case
36 under G.S. 150B-23 within 30 days after receiving notice of the penalty. ~~If a person fails~~
37 ~~to pay a penalty assessed against him, the Department shall refer the matter to the Attorney~~
38 ~~General for collection.~~ If any civil penalty has not been paid within 30 days after notice
39 of assessment has been served on the violator, the Secretary shall request the Attorney
40 General to institute a civil action in any county in which the violator resides or has his
41 or its principal place of business, to recover the amount of the assessment, unless the
42 violator contests the assessment as provided in this subsection, or requests remission of
43 the assessment in whole or in part. If any civil penalty has not been paid within 30 days
44 after the final agency decision or court order has been served on the violator, the

1 Secretary shall request the Attorney General to institute a civil action in any county in
2 which the violator resides or has his or its principal place of business, to recover the
3 amount of the assessment.

4 Notification received pursuant to this subsection or information obtained by the
5 exploitation of such notification shall not be used against any person in any criminal
6 case, except as prosecution for perjury or for giving a false statement."

7 Sec. 7. G.S. 143-215.102(a) reads as rewritten:

8 "(a) Civil Penalty. – Any person who violates any provision of this Part, or any rule,
9 regulation or order made pursuant to this Part, shall incur, in addition to any other
10 penalty provided by law, a civil penalty in an amount not to exceed ten thousand dollars
11 (\$10,000) for every such violation, the amount to be determined by the ~~Commission~~
12 Secretary after taking into consideration the ~~gravity of the violation, the previous record of~~
13 ~~the violator in complying or failing to comply with the provisions of this Article as well as G.S.~~
14 ~~143-215.1, and such other considerations as the Commission deems appropriate. factors set~~
15 out in G.S. 143B-282.1(b). The procedures set out in G.S. 143-215.6 and G.S. 143B-
16 282.1 shall apply to civil penalties assessed under this section. The penalty herein
17 provided for shall become due and payable when the person incurring the penalty
18 receives a notice in writing from the Commission describing the violation with
19 reasonable particularity and advising such person that the penalty is due. A person may
20 contest a penalty by filing a petition for a contested case under G.S. 150B-23 within 30
21 days after receiving notice of the penalty. ~~If a person fails to pay a penalty assessed against~~
22 ~~him, the Department shall refer the matter to the Attorney General for collection. If any civil~~
23 penalty has not been paid within 30 days after notice of assessment has been served on
24 the violator, the Secretary shall request the Attorney General to institute a civil action in
25 any county in which the violator resides or has his or its principal place of business, to
26 recover the amount of the assessment, unless the violator contests the assessment, or
27 requests remission of the assessment in whole or in part as provided in G.S. 143-215.6.
28 If any civil penalty has not been paid within 30 days after the final agency decision or
29 court order has been served on the violator, the Secretary shall request the Attorney
30 General to institute a civil action in any county in which the violator resides or has his
31 or its principal place of business, to recover the amount of the assessment.

32 Any sums recovered under this subsection shall be payable to the Oil Pollution
33 Protection Fund as established by this Article."

34 Sec. 8. G.S. 143-215.114(a) reads as rewritten:

35 "(a) Civil Penalties. –

36 (1) A civil penalty of not more than five thousand dollars (\$5,000) may be
37 assessed by the Secretary against any person who:

38 a. Violates any classification, standard or limitation established
39 pursuant to G.S. 143-215.107;

40 b. Is required but fails to apply for or to secure a permit required
41 by G.S. 143-215.108 or who violates or fails to act in
42 accordance with the terms, conditions, or requirements of such
43 permit;

- 1 c. Violates or fails to act in accordance with the terms, conditions,
2 or requirements of any special order or other appropriate
3 document issued pursuant to G.S. 143-215.110;
4 d. Fails to file, submit, or make available, as the case may be, any
5 documents, data or reports required by this Article or Article 21
6 of this Chapter;
7 f. Violates a rule of the Commission or a local governing body
8 implementing this Article.

9 (2) Each day of continuing violation after written notification from the
10 ~~Commission~~ Secretary shall be considered a separate offense.

11 (3) In determining the amount of the penalty the ~~Commission~~ Secretary
12 shall consider the ~~degree and extent of harm caused by the violation,~~
13 ~~the cost of rectifying the damage, and the amount of money the~~
14 ~~violation saved by not having made the necessary expenditures to~~
15 ~~comply with the appropriate pollution control requirements.~~ factors set
16 out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1
17 shall apply to civil penalty assessments that are presented to the
18 Commission for final agency decision.

19 (4) ~~The Commission, or, if authorized by the Commission, the~~
20 ~~Department, may assess the penalties provided for in this subsection.~~
21 ~~Any person assessed shall be notified of the assessment by registered~~
22 ~~or certified mail, and the notice shall specify the reasons for the~~
23 ~~assessment. If the person assessed fails to pay the amount of the~~
24 ~~assessment to the Department within 30 days after receipt of notice, or~~
25 ~~such longer period, not to exceed 180 days, as the Commission may~~
26 ~~specify, the Commission may institute a civil action in the Superior~~
27 ~~Court of Wake County to recover the amount of the assessment. The~~
28 ~~Secretary shall notify any person assessed a civil penalty of the~~
29 ~~assessment and the specific reasons therefor by registered or certified~~
30 ~~mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested~~
31 ~~case petitions shall be filed within 30 days of receipt of the notice of~~
32 ~~assessment.~~

33 (5) Requests for remission of civil penalties shall be filed with the
34 Secretary. Remission requests shall not be considered unless made
35 within 30 days of receipt of the notice of assessment. Remission
36 requests must be accompanied by a waiver of the right to a contested
37 case hearing pursuant to Chapter 150B and a stipulation of the facts on
38 which the assessment was based. Consistent with the limitations in
39 G.S. 143B-282.1(c) and (d), remission requests may be resolved by the
40 Secretary and the violator. If the Secretary and the violator are unable
41 to resolve the request, the Secretary shall deliver remission requests
42 and his recommended action to the Committee on Civil Penalty
43 Remissions of the Environmental Management Commission appointed
44 pursuant to G.S. 143B-282.1(c).

1 (6) If any civil penalty has not been paid within 30 days after notice of
2 assessment has been served on the violator, the Secretary shall request
3 the Attorney General to institute a civil action in any county in which
4 the violator resides or has his or its principal place of business, to
5 recover the amount of the assessment, unless the violator contests the
6 assessment as provided in subdivision (4) of this subsection, or
7 requests remission of the assessment in whole or in part as provided in
8 subdivision (5) of this subsection. If any civil penalty has not been
9 paid within 30 days after the final agency decision or court order has
10 been served on the violator, the Secretary shall request the Attorney
11 General to institute a civil action in any county in which the violator
12 resides or has his or its principal place of business, to recover the
13 amount of the assessment.

14 (7) The Secretary may delegate his powers and duties under this section to
15 the Director of the Division of Environmental Management of the
16 Department."

17 Sec. 9. G.S. 143-214.2A(b) reads as rewritten:

18 "(b) Civil Penalty.

19 (1) A civil penalty of not more than twenty-five thousand dollars
20 (\$25,000) may be assessed by the ~~Commission~~ Secretary against any
21 person for a first violation of this section and an additional penalty of
22 twenty-five thousand dollars (\$25,000) may be assessed for each day
23 during which the violation continues. A civil penalty of not more than
24 fifty thousand dollars (\$50,000) may be assessed by the ~~Commission~~
25 Secretary for a second or further violation and an additional penalty of
26 fifty thousand dollars (\$50,000) may be assessed for each day during
27 which the violation continues.

28 (2) ~~The Commission, or its delegate, shall determine the amount of the~~
29 ~~civil penalty proposed to be assessed under this section and shall notify~~
30 ~~the person to be assessed of the proposed assessment by registered or~~
31 ~~certified mail. The notice shall make written demand for payment~~
32 ~~upon the person responsible for the violation, and shall set forth in~~
33 ~~detail the violation for which the penalty has been invoked. The notice~~
34 ~~shall further set forth the opportunity for a contested case proceeding~~
35 ~~under Chapter 150B. The proposed penalty set forth in the notice~~
36 ~~issued by the Commission, or its delegate, shall become the final civil~~
37 ~~penalty unless it is increased or decreased by the Commission in the~~
38 ~~final agency decision of a contested case proceeding requested~~
39 ~~pursuant to Chapter 150B. If payment is not received or equitable~~
40 ~~settlement reached within 30 days after demand for payment is made,~~
41 ~~the Secretary shall refer the matter to the Attorney General for the~~
42 ~~institution of a civil action in the name of the State in the superior~~
43 ~~court of the county in which the discharge of waste or the damages to~~
44 ~~resources occurred or in Wake County if the discharge or resourcee~~

1 ~~damage occurs in the open waters of the Atlantic Ocean. In~~
2 ~~determining the amount of the penalty the Secretary shall consider the~~
3 ~~factors set out in G.S. 143B-282.1(b). The procedures set out in G.S.~~
4 ~~143B-282.1 shall apply to civil penalty assessments that are presented~~
5 ~~to the Commission for final agency decision.~~

6 (3) ~~In determining the amount of the penalty, the Commission, or its~~
7 ~~delegate, shall consider the degree and extent of harm caused by the~~
8 ~~violation, the cost of rectifying the damage, the amount of money the~~
9 ~~violation saved by his noncompliance, whether the violation was~~
10 ~~committed willfully, and the prior record of the violator in complying~~
11 ~~or failing to comply with this Article. The Secretary shall notify any~~
12 ~~person assessed a civil penalty of the assessment and the specific~~
13 ~~reasons therefor by registered or certified mail, or by any means~~
14 ~~authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be~~
15 ~~filed within 30 days of receipt of the notice of assessment.~~

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

28 (5) ~~If any civil penalty has not been paid within 30 days after notice of~~
29 ~~assessment has been served on the violator, the Secretary shall request~~
30 ~~the Attorney General to institute a civil action in any county in which~~
31 ~~the violator resides or has his or its principal place of business, to~~
32 ~~recover the amount of the assessment, unless the violator contests the~~
33 ~~assessment as provided in subdivision (3) of this subsection, or~~
34 ~~requests remission of the assessment in whole or in part as provided in~~
35 ~~subdivision (4) of this subsection. If any civil penalty has not been~~
36 ~~paid within 30 days after the final agency decision or court order has~~
37 ~~been served on the violator, the Secretary shall request the Attorney~~
38 ~~General to institute a civil action in any county in which the violator~~
39 ~~resides or has his or its principal place of business, to recover the~~
40 ~~amount of the assessment.~~

41 (6) ~~The Secretary may delegate his powers and duties under this section to~~
42 ~~the Director of the Division of Environmental Management of the~~
43 ~~Department."~~

44 Sec. 10. G.S. 87-94 reads as rewritten:

1 **"§ 87-94. Civil penalties.**

2 (a) Any person who ~~violates, on or after January 1, 1986, violates~~ any provision of
3 this Article, or any order issued pursuant thereto, or any ~~adopted regulation promulgated~~
4 rule adopted thereunder, shall be subject to ~~an administrative,~~ a civil penalty of not more
5 than one hundred dollars (\$100.00) for each violation, as determined by the
6 ~~Environmental Management Commission.~~ Secretary of Environment, Health, and Natural
7 Resources. Each day of a continuing violation shall be considered a separate offense.
8 No person shall be subject to a penalty who did not directly commit the violation or
9 cause it to be committed.

10 (b) No penalty shall be assessed until the person alleged to be in violation has
11 been:

- 12 (1) Notified of the violation in accordance with the notice provisions set
13 out in G.S. 87-91(a),
- 14 (2) Informed by said notice of remedial action, which if taken within 30
15 days from receipt of the notice, will effect compliance with this Article
16 and the regulations under it, and
- 17 (3) Warned by said notice that a civil penalty can be assessed for failure to
18 comply within the specified time.

19 (c) In determining the amount of the ~~penalty, the Commission penalty the~~
20 Secretary shall consider the degree and extent of a harm caused by the violation, the cost
21 of rectifying the damage, the amount of money the violator saved by his
22 noncompliance, whether or not the violation was committed willfully, and the prior
23 record of the violator in complying or failing to comply with this Article. factors set out
24 in G.S. 143B-282.1(b). The procedures set out in G.S. 143-215.6 and G.S. 143B-282.1
25 shall apply to civil penalties assessed under this section.

26 (d) ~~Any person assessed shall be notified of the assessment by registered or~~
27 ~~certified mail, or other means calculated to provide actual notice, and the notice shall~~
28 ~~specify the reasons for the assessment. If the person assessed fails to pay the amount of~~
29 ~~the assessment to the Department of Environment, Health, and Natural Resources, or~~
30 ~~fails to request an administrative hearing to contest such assessment, within 30 days~~
31 ~~after receipt of notice, the Commission may request the Attorney General to institute a~~
32 ~~civil action to recover the amount of the assessment in the superior court of the county~~
33 ~~in which the person assessed resides or has his or its principal place of business or in~~
34 ~~which the well is located. The Secretary shall notify any person assessed a civil penalty~~
35 ~~of the assessment and the specific reasons therefor by registered or certified mail, or by~~
36 any means authorized by G.S. 1A-1, Rule 4.

37 (e) If any civil penalty has not been paid within 30 days after notice of
38 assessment has been served on the violator, the Secretary shall request the Attorney
39 General to institute a civil action in any county in which the violator resides or has his
40 or its principal place of business, to recover the amount of the assessment, unless the
41 violator contests the assessment or requests remission of the assessment in whole or in
42 part. If any civil penalty has not been paid within 30 days after the final agency
43 decision or court order has been served on the violator, the Secretary shall request the

1 Attorney General to institute a civil action in any county in which the violator resides or
2 has his or its principal place of business, to recover the amount of the assessment.

3 (f) The Secretary of Environment, Health, and Natural Resources may delegate
4 his powers and duties under this section to the Director of the Division of
5 Environmental Management of the Department."

6 Sec. 11. This act shall become effective 1 October 1990.