

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 2249

Committee Substitute Favorable 6/14/90

Third Edition Engrossed 6/20/90

Environment & Natural Resources Senate Committee Substitute Adopted 7/13/90

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;

- 1                   b.     To issue a special order pursuant to G.S. 143-215.2(b) and G.S.  
2                   143-215.110 to any person whom the Commission finds  
3                   responsible for causing or contributing to any pollution of water  
4                   within such watershed or pollution of the air within the area for  
5                   which standards have been established;  
6                   c.     To conduct and direct that investigations be conducted pursuant  
7                   to G.S. 143-215.3 and G.S. 143-215.108(b)(5);  
8                   d.     To conduct public hearings, institute actions in superior court,  
9                   and agree upon or enter into settlements, all pursuant to G.S.  
10                  143-215.3;  
11                  e.     To direct the investigation of any killing of fish and wildlife  
12                  pursuant to G.S. 143-215.3;  
13                  f.     To consult with any person proposing to construct, install, or  
14                  acquire an air or water pollution source pursuant to G.S. 143-  
15                  215.3 and G.S. 143-215.111;  
16                  g.     To encourage local government units to handle air pollution  
17                  problems and to provide technical and consultative assistance  
18                  pursuant to G.S. 143-215.3 and G.S. 143-215.112;  
19                  h.     To review and have general oversight and supervision over  
20                  local air pollution control programs pursuant to G.S. 143-215.3  
21                  and G.S. 143-215.112;  
22                  i.     To declare an emergency when it finds a generalized dangerous  
23                  condition of water or air pollution pursuant to G.S. 143-215.3;  
24                  j.     To render advice and assistance to local government regarding  
25                  floodways pursuant to G.S. 143-215.56;  
26                  k.     To declare and delineate and modify capacity use areas  
27                  pursuant to G.S. 143-215.13;  
28                  l.     To grant permits for water use within capacity use areas  
29                  pursuant to G.S. 143-215.15;  
30                  m.     To direct that investigations be conducted when necessary to  
31                  carry out duties regarding capacity use areas pursuant to G.S.  
32                  143-215.19;  
33                  n.     To approve, disapprove and approve subject to conditions all  
34                  applications for dam construction pursuant to G.S. 143-215.28;  
35                  to require construction progress reports pursuant to G.S. 143-  
36                  215.29;  
37                  o.     To halt dam construction pursuant to G.S. 143-215.29;  
38                  p.     To grant final approval of dam construction work pursuant to  
39                  G.S. 143-215.30;  
40                  q.     To have jurisdiction and supervision over the maintenance and  
41                  operation of dams pursuant to G.S. 143-215.31;  
42                  r.     To direct the inspection of dams pursuant to G.S. 143-215.32;

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

1 restrictive standards as the State laws and ~~regulations~~ rules  
2 require; and

3 b. That the enforcement of the State laws and ~~regulations~~ rules  
4 would require the applicant to also obtain a State permit in  
5 addition to the required federal permit; and

6 c. That the enforcement of the State laws and ~~regulations~~ rules  
7 would be a duplication of effort on the part of the applicant; and

8 d. Such duplication of State and federal permit requirements  
9 would result in an unreasonable burden not only on the  
10 applicant, but also on the citizens and resources of the State."

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

13 **"§ 143B-282.1. Environmental Management Commission – quasi-judicial powers;**  
14 **procedures.**

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

19 (1) Exceptions to recommended decisions in contested cases shall be filed  
20 with the Secretary within 30 days of the receipt by the Secretary of the  
21 official record from the Office of Administrative Hearings, unless  
22 additional time is allowed by the chairman of the Commission.

23 (2) Oral arguments by the parties may be allowed by the chairman of the  
24 Commission upon request of the parties.

25 (3) Deliberations of the Commission shall be conducted in its public  
26 meeting unless the Commission determines that consultation with its  
27 counsel should be held in an executive session pursuant to G.S. 143-  
28 318.11.

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

36 (1) The degree and extent of harm to the natural resources of the State, to  
37 the public health, or to private property resulting from the violation;

38 (2) The duration and gravity of the violation;

39 (3) The effect on ground or surface water quantity or quality or on air  
40 quality;

41 (4) The cost of rectifying the damage;

42 (5) The amount of money saved by noncompliance;

43 (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. No member of the Committee on Civil Penalty  
7 Remissions may hear or vote on any matter in which he has an economic interest. The  
8 Committee on Civil Penalty Remissions shall make the final agency decision on  
9 remission requests. In determining whether a remission request will be approved, the  
10 Committee shall consider the recommendation of the Secretary and the following  
11 factors:

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

15           (2) Whether the violator promptly abated continuing environmental  
16 damage resulting from the violation;

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

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

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

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

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

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

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

36       "(a) Civil Penalties. –

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

39           a. Violates any classification, standard, ~~limitation~~–limitation, or  
40 management practice established pursuant to G.S. 143-214.1,  
41 143-214.2, or 143-215.

42           b. Is required but fails to apply for or to secure a permit required  
43 by G.S. 143-215.1, or who violates or fails to act in accordance  
44 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 any county in which the violator resides or has his or its principal place  
25 of business to recover the amount of the assessment, unless the  
26 violator contests the assessment as provided in subdivision (4) of this  
27 subsection, or requests remission of the assessment in whole or in part  
28 as provided in subdivision (6) of this subsection. If any civil penalty  
29 has not been paid within 30 days after the final agency decision or  
30 court order has been served on the violator, the Secretary shall request  
31 the Attorney General to institute a civil action in the Superior Court of  
32 any county in which the violator resides or has his or its principal place  
33 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 the Superior Court of  
39 any county in which the violator resides or has his or its principal place  
40 of business to recover the amount of the assessment, unless the  
41 violator contests the assessment as provided in subdivision (4) of this  
42 subsection, or requests remission of the assessment in whole or in part  
43 as provided in subdivision (5) of this subsection. If any civil penalty  
44 has not been paid within 30 days after the final agency decision or



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

1 on the violator, the Secretary shall request the Attorney General to institute a civil  
2 action in the Superior Court of any county in which the violator resides or has his or its  
3 principal place of business to recover the amount of the assessment. Notification  
4 received pursuant to this subsection or information obtained by the exploitation of such  
5 notification shall not be used against any person in any criminal case, except as  
6 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 the Superior Court of any county in which the violator resides or has his or its principal  
26 place of business to recover the amount of the assessment, unless the violator contests  
27 the assessment, or requests remission of the assessment in whole or in part as provided  
28 in G.S. 143-215.6. If any civil penalty has not been paid within 30 days after the final  
29 agency decision or court order has been served on the violator, the Secretary shall  
30 request the Attorney General to institute a civil action in the Superior Court of any  
31 county in which the violator resides or has his or its principal place of business to  
32 recover the amount of the assessment.

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

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

36 "(a) Civil Penalties. –

- 37 (1) A civil penalty of not more than five thousand dollars (\$5,000) may be  
38 assessed by the Secretary against any person who:
- 39 a. Violates any classification, standard or limitation established  
40 pursuant to G.S. 143-215.107;
  - 41 b. Is required but fails to apply for or to secure a permit required  
42 by G.S. 143-215.108 or who violates or fails to act in  
43 accordance with the terms, conditions, or requirements of such  
44 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.~~ 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 the Superior Court of  
4 any county in which the violator resides or has his or its principal place  
5 of business to recover the amount of the assessment, unless the  
6 violator contests the assessment as provided in subdivision (4) of this  
7 subsection, or requests remission of the assessment in whole or in part  
8 as provided in subdivision (5) of this subsection. If any civil penalty  
9 has not been paid within 30 days after the final agency decision or  
10 court order has been served on the violator, the Secretary shall request  
11 the Attorney General to institute a civil action in the Superior Court of  
12 any county in which the violator resides or has his or its principal place  
13 of business to recover the 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 the Superior Court of~~  
31 ~~any county in which the violator resides or has his or its principal place~~  
32 ~~of business to recover the amount of the assessment, unless the~~  
33 ~~violation contests the assessment as provided in subdivision (3) of this~~  
34 ~~subsection, or requests remission of the assessment in whole or in part~~  
35 ~~as provided in subdivision (4) of this subsection. If any civil penalty~~  
36 ~~has not been paid within 30 days after the final agency decision or~~  
37 ~~court order has been served on the violator, the Secretary shall request~~  
38 ~~the Attorney General to institute a civil action in the Superior Court of~~  
39 ~~any county in which the violator resides or has his or its principal place~~  
40 ~~of business to recover the 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 the Superior Court of any county in which the  
40 violator resides or has his or its principal place of business to recover the amount of the  
41 assessment, unless the violator contests the assessment or requests remission of the  
42 assessment in whole or in part. If any civil penalty has not been paid within 30 days  
43 after the final agency decision or court order has been served on the violator, the  
44 Secretary shall request the Attorney General to institute a civil action in the Superior

1 Court of any county in which the violator resides or has his or its principal place of  
2 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. In the event that House Bill 1177, 1989 Regular Session, is ratified,  
7 amendments made by this act to any section or subsection of the General Statutes which  
8 is recodified or amended by House Bill 1177, 1989 Regular Session, as ratified shall be  
9 made to such sections or subsections as they are recodified or amended. The Revisor of  
10 Statutes shall adjust the lettering and numbering of sections, subsections, and  
11 subdivisions of the General Statutes which are amended by both this act and by House  
12 Bill 1177, 1989 Regular Session, as ratified to conform to the lettering and numbering  
13 of such sections, subsections, and subdivisions as they appear in House Bill 1177, 1989  
14 Regular Session, as ratified.

15 Sec. 12. This act shall become effective 1 October 1990.