

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1056

Short Title: EMC Cannot Remit Fines.

(Public)

Sponsors: Representative Luebke.

Referred to: Environment.

April 22, 1991

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE AMOUNT OF A CIVIL PENALTY ASSESSMENT AS DETERMINED BY THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES IS BINDING ON THE ENVIRONMENTAL MANAGEMENT COMMISSION IN ITS REVIEW OF THE DECISION RECOMMENDED BY THE DEPARTMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-282.1 reads as rewritten:

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

(a) With respect to those matters within its jurisdiction, the Environmental Management Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. ~~Statutes on all issues other than the amount of the assessment.~~ This section and any rules adopted by the Environmental Management Commission shall govern such proceedings:

- (1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the chairman of the Commission.
- (2) Oral arguments by the parties may be allowed by the chairman of the Commission upon request of the parties.
- (3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its

1 counsel should be held in an executive session pursuant to G.S. 143-
2 318.11.

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

- 10 ~~(1) The degree and extent of harm to the natural resources of the State, to~~
11 ~~the public health, or to private property resulting from the violation;~~
- 12 ~~(2) The duration and gravity of the violation;~~
- 13 ~~(3) The effect on ground or surface water quantity or quality or on air~~
14 ~~quality;~~
- 15 ~~(4) The cost of rectifying the damage;~~
- 16 ~~(5) The amount of money saved by noncompliance;~~
- 17 ~~(6) Whether the violation was committed willfully or intentionally;~~
- 18 ~~(7) The prior record of the violator in complying or failing to comply with~~
19 ~~programs over which the Environmental Management Commission has~~
20 ~~regulatory authority; and~~
- 21 ~~(8) The cost to the State of the enforcement procedures.~~

22 (b) In contested cases that arise from civil penalty assessments, the Commission
23 shall make the final agency decision on all issues other than the amount of the
24 assessment. In contested cases that arise from civil penalty assessments, the
25 Commission shall not remit the amount of the assessment as recommended by the
26 Department, which recommendation shall be final as to the amount.

27 ~~(c) The chairman shall appoint a Committee on Civil Penalty Remissions from~~
28 ~~the members of the Commission. No member of the Committee on Civil Penalty~~
29 ~~Remissions may hear or vote on any matter in which he has an economic interest. The~~
30 ~~Committee on Civil Penalty Remissions shall make the final agency decision on~~
31 ~~remission requests. In determining whether a remission request will be approved, the~~
32 ~~Committee shall consider the recommendation of the Secretary and the following~~
33 ~~factors:~~

- 34 ~~(1) Whether one or more of the civil penalty assessment factors in~~
35 ~~subsection (b) of this section were wrongly applied to the detriment of~~
36 ~~the petitioner;~~
- 37 ~~(2) Whether the violator promptly abated continuing environmental~~
38 ~~damage resulting from the violation;~~
- 39 ~~(3) Whether the violation was inadvertent or a result of an accident;~~
- 40 ~~(4) Whether the violator had been assessed civil penalties for any previous~~
41 ~~violations;~~
- 42 ~~(5) Whether payment of the civil penalty will prevent payment for the~~
43 ~~remaining necessary remedial actions.~~

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

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

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

14 Sec. 2. This act is effective upon ratification.