

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 451

Environment and Natural Resources Committee Substitute Adopted 5/13/91

Third Edition Engrossed 5/14/91

House Committee Substitute Favorable 7/10/91

Short Title: Improve Environmental Enforcement.

(Public)

Sponsors:

Referred to:

April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE INVESTIGATION AND ENFORCEMENT OF CRIMES AGAINST THE ENVIRONMENT, TO DECLARE UNLAWFUL DISCHARGES TO BE CRIMES AND TO ESTABLISH A THREE-YEAR STATUTE OF LIMITATION FOR THE COLLECTION OF CERTAIN ENVIRONMENTAL CIVIL PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-399(i)(3) reads as rewritten:

"(3) 'Law enforcement officer' means any officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, 'law enforcement officer' means any employee of a county or ~~municipal park or recreation department~~ municipality designated by the ~~department head~~ county or municipality as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9);".

Sec. 2. G.S. 114-15 reads as rewritten:

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1 **"§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call**  
2 **of Governor; witness fees and mileage for Director and assistants.**

3 (a) The Bureau shall, through its Director and upon request of the Governor,  
4 investigate and prepare evidence in the event of any lynching or mob violence in the  
5 State; shall investigate all cases arising from frauds in connection with elections when  
6 requested to do so by the Board of Elections, and when so directed by the Governor.  
7 Such investigation, however, shall in nowise interfere with the power of the Attorney  
8 General to make such investigation as he is authorized to make under the laws of the  
9 State. The Bureau is authorized further, at the request of the Governor, to investigate  
10 cases of frauds arising under the Social Security Laws of the State, of violations of the  
11 gaming laws, and lottery laws, and matters of similar kind when called upon by the  
12 Governor so to do. In all such cases it shall be the duty of the Department to keep such  
13 records as may be necessary and to prepare evidence in the cases investigated, for the  
14 use of enforcement officers and for the trial of causes. The services of the Director of  
15 the Bureau, and of his assistants, may be required by the Governor in connection with  
16 the investigation of any crime committed anywhere in the State when called upon by the  
17 enforcement officers of the State, and when, in the judgment of the Governor, such  
18 services may be rendered with advantage to the enforcement of the criminal law. The  
19 State Bureau of Investigation is hereby authorized to investigate without request the  
20 attempted arson of, or arson of, damage of, theft from, or theft of, or misuse of, any  
21 State-owned personal property, buildings, or other real property or any assault upon or  
22 threats against any legislative officer named in G.S. 147-2(1), (2), or (3) or any  
23 executive officer named in G.S. 147-3(c). The Bureau also is authorized at the request  
24 of the Governor to conduct a background investigation on a person that the Governor  
25 plans to nominate for a position that must be confirmed by the General Assembly, the  
26 Senate, or the House of Representatives. The background investigation of the proposed  
27 nominee shall be limited to an investigation of the person's criminal record, educational  
28 background, employment record, records concerning the listing and payment of taxes,  
29 and credit record, and to a requirement that the person provide the information  
30 contained in the statements of Executive Order Number 1, filed on January 31, 1985, as  
31 contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985).  
32 The Governor must give the person being investigated written notice that he intends to  
33 request a background investigation at least 10 days prior to the date that he requests the  
34 State Bureau of Investigation to conduct the background investigation. The written  
35 notice shall be sent by regular mail, and there is created a rebuttable presumption that  
36 the person received the notice if the governor has a copy of the notice.

37 (b) The State Bureau of Investigation is further authorized, upon request of the  
38 Governor or the Attorney General, to investigate the commission or attempted  
39 commission of the crimes defined in the following statutes:

- 40 (1) All sections of Article 4A of Chapter 14 of the General Statutes;
- 41 (2) G.S. 14-277.1;
- 42 (3) G.S. 14-277.2;
- 43 (4) G.S. 14-283;
- 44 (5) G.S. 14-284;

- 1 (6) G.S. 14-284.1;  
 2 (7) G.S. 14-288.2;  
 3 (8) G.S. 14-288.7;  
 4 (9) G.S. 14-288.8; and  
 5 (10) ~~G.S. 14-288.20.~~ 14-288.20;  
 6 (11) G.S. 14-284.2;  
 7 (12) G.S. 14-399(e);  
 8 (13) G.S. 130A-26.1;  
 9 (14) G.S. 143-215.6B;  
 10 (15) G.S. 143-215.88B; and  
 11 (16) G.S. 143-215.114B.

12 (c) All records and evidence collected and compiled by the Director of the  
 13 Bureau and his assistants shall not be considered public records within the meaning of  
 14 G.S. 132-1, and following, of the General Statutes of North Carolina and may be made  
 15 available to the public only upon an order of a court of competent jurisdiction. Provided  
 16 that all records and evidence collected and compiled by the Director of the Bureau and  
 17 his assistants shall, upon request, be made available to the district attorney of any  
 18 district if the same concerns persons or investigations in his district.

19 (d) In all cases where the cost is assessed against the defendant and paid by him,  
 20 there shall be assessed in the bill of cost, mileage and witness fees to the Director and  
 21 any of his assistants who are witnesses in cases arising in courts of this State. The fees  
 22 so assessed, charged and collected shall be forwarded by the clerks of the court to the  
 23 Treasurer of the State of North Carolina, and there credited to the Bureau of  
 24 Identification and Investigation Fund."

25 Sec. 3. G.S. 143-215.6A reads as rewritten:

26 "**§ 143-215.6A. Enforcement procedures; civil penalties.**

27 (a) A civil penalty of not more than ten thousand dollars (\$10,000) may be  
 28 assessed by the Secretary against any person who:

- 29 (1) Violates any classification, standard, limitation, or management  
 30 practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-  
 31 215.  
 32 (2) Is required but fails to apply for or to secure a permit required by G.S.  
 33 143-215.1, or who violates or fails to act in accordance with the terms,  
 34 conditions, or requirements of such ~~permit.~~ permit or any other permit  
 35 or certification issued pursuant to authority conferred by this Part,  
 36 including pretreatment permits issued by local governments and  
 37 laboratory certifications.  
 38 (3) Violates or fails to act in accordance with the terms, conditions, or  
 39 requirements of any special order or other appropriate document issued  
 40 pursuant to G.S. 143-215.2.  
 41 (4) Fails to file, submit, or make available, as the case may be, any  
 42 documents, data, or reports required by this Article or G.S. 143-355(k)  
 43 relating to water use information.

- 1 (5) Refuses access to the Commission or its duly designated representative  
2 to any premises for the purpose of conducting a lawful inspection  
3 provided for in this Article.
- 4 (6) Violates a rule of the Commission implementing this Part or G.S. 143-  
5 355(k).
- 6 (7) Violates or fails to act in accordance with the statewide minimum  
7 water supply watershed management requirements adopted pursuant to  
8 G.S. 143-214.5, whether enforced by the Commission or a local  
9 government.
- 10 (8) Violates the offenses set out in G.S. 143-215.6B.
- 11 (b) If any action or failure to act for which a penalty may be assessed under this  
12 section is continuous, the Secretary may assess a penalty not to exceed ten thousand  
13 dollars (\$10,000) per day for so long as the violation continues, unless otherwise  
14 stipulated.
- 15 (c) In determining the amount of the penalty the Secretary shall consider the  
16 factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall  
17 apply to civil penalty assessments that are presented to the Commission for final agency  
18 decision.
- 19 (d) The Secretary shall notify any person assessed a civil penalty of the  
20 assessment and the specific reasons therefor by registered or certified mail, or by any  
21 means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within  
22 30 days of receipt of the notice of assessment.
- 23 (e) Consistent with G.S. 143B-282.1, a civil penalty of not more than ten thousand  
24 dollars (\$10,000) per month may be assessed by the Commission against any local  
25 government which fails to adopt or enforce a water supply watershed protection  
26 program as required by G.S. 143-214.5. No such penalty shall be imposed against a  
27 local government until the Commission has assumed the responsibility for administering  
28 and enforcing the local water supply watershed protection program. Civil penalties  
29 shall be imposed pursuant to a uniform schedule adopted by the Commission. The  
30 schedule of civil penalties shall be based on acreage and other relevant cost factors and  
31 shall be designed to recoup the costs of administration and enforcement.
- 32 (f) Requests for remission of civil penalties shall be filed with the Secretary.  
33 Remission requests shall not be considered unless made within 30 days of receipt of the  
34 notice of assessment. Remission requests must be accompanied by a waiver of the right  
35 to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on  
36 which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c)  
37 and (d), remission requests may be resolved by the Secretary and the violator. If the  
38 Secretary and the violator are unable to resolve the request, the Secretary shall deliver  
39 remission requests and his recommended action to the Committee on Civil Penalty  
40 Remissions of the Environmental Management Commission appointed pursuant to G.S.  
41 143B-282.1(c).
- 42 (g) If any civil penalty has not been paid within 30 days after notice of  
43 assessment has been served on the violator, the Secretary shall request the Attorney  
44 General to institute a civil action in the Superior Court of any county in which the

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

11 (h) The Secretary may delegate his powers and duties under this section to the  
12 Director of the Division of Environmental Management of the Department.

13 (i) As used in this subsection, 'municipality' refers to any unit of local  
14 government which operates a wastewater treatment plant. As used in this subsection,  
15 'unit of local government' has the same meaning as in G.S. 130A-290. The provisions  
16 of this subsection shall apply whenever a municipality that operates a wastewater  
17 treatment plant with an influent bypass diversion structure and with a permitted  
18 discharge of 10 million gallons per day or more into any of the surface waters of the  
19 State that have been classified as nutrient sensitive waters (NSW) under rules adopted  
20 by the Commission is subject to a court order which specifies (i) a schedule of activities  
21 with respect to the treatment of wastewater by the municipality; (ii) deadlines for the  
22 completion of scheduled activities; and (iii) stipulated penalties for failure to meet such  
23 deadlines. A municipality as specified herein that violates any provision of such order  
24 for which a penalty is stipulated shall pay the full amount of such penalty as provided in  
25 the order unless such penalty is modified, remitted, or reduced by the court.

26 (j) Local governments certified and approved to administer and enforce  
27 pretreatment programs by the Commission pursuant to G.S. 143-215.3(a)(14) may  
28 assess civil penalties for violations of their respective programs in accordance with the  
29 powers conferred upon the Commission and the Secretary in this section, except that  
30 actions for collection of unpaid civil penalties shall be referred to the attorney  
31 representing the assessing local government. The total of the civil penalty assessed by a  
32 local government and the civil penalty assessed by the Secretary for any violation may  
33 not exceed the maximum civil penalty for such violation under this section.

34 (k) A person who has been assessed a civil penalty by a local government as  
35 provided by subsection (j) of this section may request a review of the assessment by  
36 filing a request for review with the local government within 30 days of the date the  
37 notice of assessment is received. If a local ordinance provides for a local administrative  
38 hearing, the hearing shall afford minimum due process including an unbiased hearing  
39 official. The local government shall make a final decision on the request for review  
40 within 90 days of the date the request for review is filed. The final decision on a request  
41 for review shall be subject to review by the superior court pursuant to Article 27 of  
42 Chapter 1 of the General Statutes. If the local ordinance does not provide for a local  
43 administrative hearing, a person who has been assessed a civil penalty by a local  
44 government as provided by subsection (j) of this section may contest the assessment by

1 filing a civil action in superior court within 60 days of the date the notice of assessment  
2 is received."

3 Sec. 4. G.S. 143-215.6B reads as rewritten:

4 **"§ 143-215.6B. Enforcement procedures: criminal penalties.**

5 (a) For purposes of this section, the term 'person' shall mean, in addition to the  
6 definition contained in G.S. 143-212, any responsible corporate or public officer or  
7 employee; provided, however, that where a vote of the people is required to effectuate  
8 the intent and purpose of this Article by a county, city, town, or other political  
9 subdivision of the State, and the vote on the referendum is against the means or  
10 machinery for carrying said intent and purpose into effect, then, and only then, this  
11 section shall not apply to elected officials or to any responsible appointed officials or  
12 employees of such county, city, town, or political subdivision.

13 (b) No proceeding shall be brought or continued under this section for or on  
14 account of a violation by any person who has previously been convicted of a federal  
15 violation based upon the same set of facts.

16 (c) In proving the defendant's possession of actual knowledge, circumstantial  
17 evidence may be used, including evidence that the defendant took affirmative steps to  
18 shield himself from relevant information. Consistent with the principles of common  
19 law, the subjective mental state of defendants may be inferred from their conduct.

20 (d) For the purposes of the felony provisions of this section, a person's state of  
21 mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is  
22 the subject of the prosecution is the result of any of the following occurrences or  
23 circumstances:

- 24 (1) A natural disaster or other act of God which could not have been  
25 prevented or avoided by the exercise of due care or foresight.
- 26 (2) An act of third parties other than agents, employees, contractors, or  
27 subcontractors of the defendant.
- 28 (3) An act done in reliance on the written advice or emergency on-site  
29 direction of an employee of the Department. In emergencies, oral  
30 advice may be relied upon if written confirmation is delivered to the  
31 employee as soon as practicable after receiving and relying on the  
32 advice.
- 33 (4) An act causing no significant harm to the environment or risk to the  
34 public health, safety, or welfare and done in compliance with other  
35 conflicting environmental requirements or other constraints imposed in  
36 writing by environmental agencies or officials after written notice is  
37 delivered to all relevant agencies that the conflict exists and will cause  
38 a violation of the identified standard.
- 39 (5) Violations of permit limitations causing no significant harm to the  
40 environment or risk to the public health, safety, or welfare for which  
41 no enforcement action or civil penalty could have been imposed under  
42 any written civil enforcement guidelines in use by the Department at  
43 the time, including but not limited to, guidelines for the pretreatment  
44 permit civil penalties. This subdivision shall not be construed to

1 require the Department to develop or use written civil enforcement  
2 guidelines.

3 (6) Occasional, inadvertent, short-term violations of permit limitations  
4 causing no significant harm to the environment or risk to the public  
5 health, safety, or welfare. If the violation occurs within 30 days of a  
6 prior violation or lasts for more than 24 hours, it is not an occasional,  
7 short-term violation.

8 (e) All general defenses, affirmative defenses, and bars to prosecution that may  
9 apply with respect to other criminal offenses under State criminal offenses may apply to  
10 prosecutions brought under this section or other criminal statutes that refer to this  
11 section and shall be determined by the courts of this State according to the principles of  
12 common law as they may be applied in the light of reason and experience. Concepts of  
13 justification and excuse applicable under this section may be developed in the light of  
14 reason and experience.

15 (f) Any person who negligently violates ~~any~~ any: (i) classification, standard  
16 standard, or limitation established in rules adopted by the Commission pursuant to G.S.  
17 143-214.1, 143-214.2, or 143-215; any (ii) term, condition, or requirement of a permit  
18 issued pursuant to this Part, including permits issued pursuant to G.S. 143-215.1,  
19 pretreatment permits issued by local governments, and laboratory certifications; G.S.  
20 143-215.1 ~~or~~ (iii) term, condition, or requirement of a special order or other appropriate  
21 document issued pursuant to G.S. 143-215.2; or any (iv) rule of the Commission  
22 implementing any of the said sections, this Part; and any person who negligently fails to  
23 apply for or to secure a permit required by G.S. 143-215.1 shall be guilty of a  
24 misdemeanor punishable by a fine not to exceed fifteen thousand dollars (\$15,000) per  
25 day of violation, provided that such fine shall not exceed a cumulative total of two  
26 hundred thousand dollars (\$200,000) for each period of 30 days during which a  
27 violation continues, or by imprisonment not to exceed six months, or by both.

28 (g) Any person who knowingly and willfully violates ~~any~~ any (i) classification,  
29 standard, or limitation established in the rules of adopted by the Commission pursuant to  
30 G.S. 143-214.1, 143-214.2, or 143-215 ~~or any~~ 143-215; (ii) term, condition, or  
31 requirement of a permit issued pursuant to this Part, including permits issued pursuant  
32 to G.S. 143-215.1, pretreatment permits issued by local governments, and laboratory  
33 certifications; G.S. 143-215.1 ~~or~~ (iii) term, condition, or requirement of a special order or  
34 other appropriate document issued pursuant to G.S. 143-215.2 ~~143-215.2; and any~~  
35 person who knowingly and willfully fails to apply for or to secure a permit required by  
36 G.S. 143-215.1 shall be guilty of a Class J felony, punishable by a fine not to exceed  
37 one hundred thousand dollars (\$100,000) per day of violation, provided that this fine  
38 shall not exceed a cumulative total of five hundred thousand dollars (\$500,000) for each  
39 period of 30 days during which a violation continues, or by imprisonment not to exceed  
40 three years, or by both. For the purposes of this subsection, the phrase 'knowingly and  
41 willfully' shall mean intentionally and consciously as the courts of this State, according  
42 to the principles of common law interpret the phrase in the light of reason and  
43 experience.

- 1 (h) (1) Any person who knowingly violates ~~any~~ any: (i)  
2 classification, standard, or limitation established in ~~the~~ rules of  
3 adopted by the Commission pursuant to G.S. 143-214.1, 143-214.2,  
4 143-215, or any 143-215; (ii) term, condition, or requirement of a  
5 permit issued pursuant to this Part, including permits issued pursuant  
6 to G.S. 143-215.1, pretreatment permits issued by local  
7 governments, and laboratory certifications; G.S. 143-215.1 or (iii)  
8 term, condition, or requirement of a special order or other  
9 appropriate document issued pursuant to G.S. 143-215.2-143-215.2;  
10 and any person who knowingly fails to apply for or to secure a  
11 permit required by G.S. 143-215.1 and who knows at that time that  
12 he thereby places another person in imminent danger of death or  
13 serious bodily injury shall be guilty of a Class H felony, punishable  
14 by a fine not to exceed two hundred fifty thousand dollars  
15 (\$250,000) per day of violation, provided that this fine shall not  
16 exceed a cumulative total of one million dollars (\$1,000,000) for  
17 each period of 30 days during which a violation continues, or by  
18 imprisonment not to exceed 10 years, or by both.
- 19 (2) For the purposes of this subsection, a person's state of mind is knowing  
20 with respect to:
- 21 a. His conduct, if he is aware of the nature of his conduct;  
22 b. An existing circumstance, if he is aware or believes that the  
23 circumstance exists; or  
24 c. A result of his conduct, if he is aware or believes that his  
25 conduct is substantially certain to cause danger of death or  
26 serious bodily injury.
- 27 (3) Under this subsection, in determining whether a defendant who is a  
28 natural person knew that his conduct placed another person in  
29 imminent danger of death or serious bodily injury:
- 30 a. The person is responsible only for actual awareness or actual  
31 belief that he possessed; and  
32 b. Knowledge possessed by a person other than the defendant but  
33 not by the defendant himself may not be attributed to the  
34 defendant.
- 35 (4) It is an affirmative defense to a prosecution under this subsection that  
36 the conduct charged was conduct consented to by the person  
37 endangered and that the danger and conduct charged were reasonably  
38 foreseeable hazards of an occupation, a business, or a profession; or of  
39 medical treatment or medical or scientific experimentation conducted  
40 by professionally approved methods and such other person had been  
41 made aware of the risks involved prior to giving consent. The  
42 defendant may establish an affirmative defense under this subdivision  
43 by a preponderance of the evidence.



1 (i) Any person who knowingly makes any false statement, representation, or  
2 certification in any application, record, report, plan, or other document filed or required  
3 to be maintained under this Article or a rule implementing this Article; or who  
4 knowingly makes a false statement of a material fact in a rulemaking proceeding or  
5 contested case under this Article; or who falsifies, tampers with, or knowingly renders  
6 inaccurate any recording or monitoring device or method required to be operated or  
7 maintained under this Article or rules of the Commission implementing this Article  
8 shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars  
9 (\$10,000), or by imprisonment not to exceed six months, or by both.

10 (j) Any person convicted of a felony offense under subsections (g), (h), or (i) of  
11 this section following a previous felony conviction under this section shall be subject to  
12 a fine, or imprisonment, or both, not exceeding twice the amount of the fine, or twice  
13 the term of imprisonment provided in the subsection under which the second or  
14 subsequent conviction occurs."

15 Sec. 5. G.S. 113A-64(a)(2) reads as rewritten:

16 "(2) The Secretary, for violations under the Commission's jurisdiction, or  
17 the governing body of any local government having jurisdiction, shall  
18 determine the amount of the civil penalty to be assessed under G.S.  
19 113A-64(a) and shall make written demand for payment upon the  
20 person responsible for the violation, and shall set forth in detail the  
21 violation for which the penalty has been invoked. If payment is not  
22 received or equitable settlement reached within 30 days after demand  
23 for payment is made, the Secretary shall refer the matter to the  
24 Attorney General for the institution of a civil action in the name of the  
25 State in the superior court of the county in which the violation is  
26 alleged to have occurred to recover the amount of the penalty, and  
27 local governments shall refer such matters to their respective attorneys  
28 for the institution of a civil action in the name of the local government  
29 in the appropriate division of the General Court of Justice of the  
30 county in which the violation is alleged to have occurred for recovery  
31 of the penalty. Such civil actions must be filed within three years of  
32 the date the final agency decision was served on the violator. Any  
33 sums recovered shall be used to carry out the purposes and  
34 requirements of this Article."

35 Sec. 6. G.S. 113A-126(d)(3) reads as rewritten:

36 "(3) The Commission may assess the penalties provided for in this  
37 subsection. The Commission shall notify a person who is assessed a  
38 penalty by registered or certified mail. The notice shall state the  
39 reasons for the penalty. A person may contest a penalty by filing a  
40 petition for a contested case under G.S. 150B-23 within 20 days after  
41 receiving the notice of assessment. If a person fails to pay a penalty,  
42 the Commission shall refer the matter to the Attorney General for  
43 collection. Such civil actions must be filed within three years of the  
44 date the final agency decision was served on the violator."

1           Sec. 7. G.S. 143-215.114A(f) reads as rewritten:

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

15           Sec. 8. G.S. 130A-22(a) reads as rewritten:

16       **"§ 130A-22. Administrative penalties.**

17       (a) The Secretary may impose an administrative penalty on a person who violates  
18 Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any  
19 order issued under Article 9. Each day of a continuing violation shall constitute a  
20 separate violation. The penalty shall not exceed five thousand dollars (\$5,000) per day  
21 in the case of a violation involving nonhazardous waste. The penalty shall not exceed  
22 twenty-five thousand dollars (\$25,000) per day in case of a first violation involving  
23 hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical  
24 waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical  
25 waste entering waters or lands of the State; and shall not exceed fifty thousand dollars  
26 (\$50,000) per day for a second or further violation involving the disposal of medical  
27 waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical  
28 waste entering waters or lands of the State. If a person fails to pay a civil penalty within  
29 60 days after the final agency decision or court order has been served on the violator,  
30 the Secretary shall request the Attorney General to institute a civil action in the superior  
31 court of any county in which the violator resides or has his or its principal place of  
32 business to recover the amount of the assessment. Such civil actions must be filed  
33 within three years of the date the final agency decision or court order was served on the  
34 violator."

35       Sec. 9. This act becomes effective 1 October 1991.