

**§ 143-215.6A. Enforcement procedures: civil penalties.**

(a) A civil penalty of not more than twenty-five thousand dollars (\$25,000) may be assessed by the Secretary against any person who:

- (1) Violates any classification, standard, limitation, or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.
- (2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit or any other permit or certification issued pursuant to authority conferred by this Part, including pretreatment permits issued by local governments and laboratory certifications.
- (3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.
- (4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Article or G.S. 143-355(k) relating to water use information.
- (5) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.
- (6) Violates a rule of the Commission implementing this Part, Part 2A of this Article, or G.S. 143-355(k).
- (7) Violates or fails to act in accordance with the statewide minimum water supply watershed management requirements adopted pursuant to G.S. 143-214.5, whether enforced by the Commission or a local government.
- (8) Violates the offenses set out in G.S. 143-215.6B.
- (9) Is required, but fails, to apply for or to secure a certificate required by G.S. 143-215.22L, or who violates or fails to act in accordance with the terms, conditions, or requirements of the certificate.
- (10) Violates subsections (c1) through (c5) of G.S. 143-215.1 or a rule adopted pursuant to subsections (c1) through (c5) of G.S. 143-215.1.
- (11) Violates or fails to act in accordance with G.S. 143-214.7(d1).

(a1) For purposes of this section, the term "Part" includes Part 1A of this Article.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed twenty-five thousand dollars (\$25,000) per day for so long as the violation continues, unless otherwise stipulated.

(b1) The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the five years preceding the violation. The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day for so long as the violation continues, for a violation of subdivision (4) of subsection (a) of this section only if the Secretary determines that the violation is intentional.

(c) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

(e) Consistent with G.S. 143B-282.1, a civil penalty of not more than ten thousand dollars (\$10,000) per month may be assessed by the Commission against any local government that fails to adopt a local water supply watershed protection program as required by G.S. 143-214.5, or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements. No such penalty shall be imposed against a local government until the Commission has assumed the responsibility for administering and enforcing the local water supply watershed protection program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission. The schedule of civil penalties shall be based on acreage and other relevant cost factors and shall be designed to recoup the costs of administration and enforcement.

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

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

(h) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 14.

(h1) The clear proceeds of civil penalties assessed by the Secretary or the Commission pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

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

(j) Local governments certified and approved by the Commission to administer and enforce pretreatment programs pursuant to G.S. 143-215.3(a)(14), stormwater programs pursuant to G.S. 143-214.7, or riparian buffer protection programs pursuant to G.S. 143-214.23 may assess civil

penalties for violations of their respective programs in accordance with the powers conferred upon the Commission and the Secretary in this section, except that actions for collection of unpaid civil penalties shall be referred to the attorney representing the assessing local government. The total of the civil penalty assessed by a local government and the civil penalty assessed by the Secretary for any violation may not exceed the maximum civil penalty for such violation under this section.

(k) A person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may request a review of the assessment by filing a request for review with the local government within 30 days of the date the notice of assessment is received. If a local ordinance provides for a local administrative hearing, the hearing shall afford minimum due process including an unbiased hearing official. The local government shall make a final decision on the request for review within 90 days of the date the request for review is filed. The final decision on a request for review shall be subject to review by the superior court pursuant to Article 27 of Chapter 1 of the General Statutes. If the local ordinance does not provide for a local administrative hearing, a person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may contest the assessment by filing a civil action in superior court within 60 days of the date the notice of assessment is received. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 12; c. 712, s. 2; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 583, s. 7; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 633, ss. 9-11; 1981, c. 514, s. 1; c. 585, s. 13; 1987, c. 271; c. 827, ss. 154, 164; 1989, c. 426, s. 4; 1989 (Reg. Sess., 1990), c. 951, s. 1; c. 1036, s. 3; c. 1045, s. 1; c. 1075, s. 6; 1991, c. 579, s. 2; c. 725, s. 3; 1993, c. 348, s. 2; 1995 (Reg. Sess., 1996), c. 743, s. 14; 1997-458, s. 6.2; 1998-215, s. 63; 1999-329, ss. 5.1, 5.3, 5.5, 5.7; 2004-124, s. 6.29(b); 2006-250, s. 6; 2007-484, s. 43.7C; 2007-518, s. 5; 2007-536, s. 3.)