

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 246
HOUSE BILL 709

AN ACT TO PROVIDE CONSISTENCY AND CLARITY TO THE GUIDELINES ESTABLISHED FOR THE ASSESSMENT OF CIVIL PENALTIES UNDER THE MINING ACT OF 1971, THE NORTH CAROLINA WELL CONSTRUCTION ACT, AND THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74-64(a)(1) is amended by adding a sub-subdivision after sub-subdivision b. to read:

"c. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by his noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Article."

Sec. 2. G.S. 87-94(c) is amended by deleting "compliance" and substituting "noncompliance".

Sec. 3. G.S. 113A-64(a) reads as rewritten:

"(a) Civil Penalties. (1) Any person who violates any of the provisions of this Article or any ordinance, rule, regulation, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty of not more than one hundred dollars (\$100.00). No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Each day of a continuing violation shall constitute a separate violation under G.S. 113A-64(a)(1).

(2) The Secretary, for violations under the Commission's jurisdiction, or the governing body of any local government having jurisdiction, shall determine the amount of the civil penalty to be assessed under G.S. 113A-64(a) and shall make written demand for payment upon the person responsible for the violation, and shall set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the Secretary shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the penalty, and

local governments shall refer such matters to their respective attorneys for the institution of a civil action in the name of the local government in the appropriate division of the General Court of Justice of the county in which the violation is alleged to have occurred for recovery of the penalty. Any sums recovered shall be used to carry out the purposes and requirements of this Article.

- (3) In determining the amount of the penalty, the Secretary shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by his noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Article."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of June, 1987.