

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 1177

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Short Title: Penalties for Environmental Crimes.

(Public)

Sponsors:

Referred to:

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTIES FOR VIOLATIONS OF THE WATER QUALITY, AIR QUALITY, OIL AND HAZARDOUS SUBSTANCES CONTROL, AND HAZARDOUS WASTE MANAGEMENT PROGRAMS THAT ARE KNOWINGLY AND WILLFULLY COMMITTED OR THAT INVOLVE KNOWING ENDANGERMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.6(a) is recodified as G.S. 143-215.6A and reads as rewritten:

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

(a) Civil Penalties.—

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

a.(1) Violates any classification, standard, limitation or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.

b.(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.

- 1 ~~e~~(3) Violates or fails to act in accordance with the terms, conditions, or
2 requirements of any special order or other appropriate document issued
3 pursuant to G.S. 143-215.2.
- 4 ~~d~~(4) Fails to file, submit, or make available, as the case may be, any
5 documents, data or reports required by this Article or G.S. 143-355(k)
6 relating to water use information.
- 7 ~~e~~(5) Refuses access to the Commission or its duly designated representative
8 to any premises for the purpose of conducting a lawful inspection
9 provided for in this Article.
- 10 ~~f~~(6) Violates a rule of the Commission implementing this Part or G.S. 143-
11 355(k).
- 12 ~~g~~(7) 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 (8) Violates the offenses set out in G.S. 143-215.6B.
- 17 ~~(2)~~(b) If any action or failure to act for which a penalty may be assessed
18 under this ~~subsection~~section is continuous, the Commission may
19 assess a penalty not to exceed ten thousand dollars (\$10,000) per day
20 for so long as the violation continues, unless otherwise stipulated.
- 21 ~~(3)~~(c) In determining the amount of the penalty the Commission shall
22 consider the degree and extent of harm caused by the violation and
23 the cost of rectifying the damage.
- 24 ~~(4)~~(d) The Commission may assess the penalties provided for in this
25 ~~subsection~~section. Any person assessed shall be notified of the
26 assessment by registered or certified mail, and the notice shall
27 specify the reasons for the assessment. If the person assessed fails to
28 pay the amount of the assessment to the Department within 30 days
29 after receipt of notice, or such longer period, not to exceed 180 days,
30 as the Commission may specify, the Commission may institute a
31 civil action in the superior court of the county in which the violation
32 occurred or, in the discretion of the Commission, in the superior
33 court of the county in which the person assessed resides or has his or
34 its principal place of business, to recover the amount of the
35 assessment.
- 36 ~~(5)~~(e) A civil penalty of not more than ten thousand dollars (\$10,000) per
37 month may be assessed by the Commission against any local
38 government which fails to adopt or enforce a water supply watershed
39 protection program as required by G.S. 143-214.5. No such penalty
40 shall be imposed against a local government until the Commission
41 has assumed the responsibility for administering and enforcing the
42 local water supply watershed protection program. Civil penalties
43 shall be imposed pursuant to a uniform schedule adopted by the
44 Commission. The schedule of civil penalties shall be based on

1 acreage and other relevant cost factors and shall be designed to
2 recoup the costs of administration and enforcement."

3 Sec. 2. G.S. 143-215.6(b) is recodified as G.S. 143-215.6B and reads as
4 rewritten:

5 **"§ 143-215.6B. Enforcement procedures: criminal penalties.**

6 (b) ~~Criminal Penalties.—~~

7 (4) (a) For purposes of this subsection, section, the term 'person' shall mean, in
8 addition to the definition contained in G.S. 143-213, any responsible corporate or public
9 officer or employee; provided, however, that where a vote of the people is required to
10 effectuate the intent and purpose of this Article by a county, city, town, or other political
11 subdivision of the State, and the vote on the referendum is against the means or
12 machinery for carrying said intent and purpose into effect, then, and only then, this
13 subsection-section shall not apply to elected officials or to any responsible appointed
14 officials or employees of such county, city, town, or political subdivision.

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

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

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

26 (1) A natural disaster or other act of God which could not have been
27 prevented or avoided by the exercise of due care or foresight.

28 (2) An act of third parties other than agents, employees, contractors, or
29 subcontractors of the defendant.

30 (3) An act done in reliance on the written advice or emergency on-site
31 direction of an employee of the Department. In emergencies, oral
32 advice may be relied upon if written confirmation is delivered to the
33 employee as soon as practicable after receiving and relying on the
34 advice.

35 (4) An act causing no significant harm to the environment or risk to the
36 public health, safety, or welfare and done in compliance with other
37 conflicting environmental requirements or other constraints imposed in
38 writing by environmental agencies or officials after written notice is
39 delivered to all relevant agencies that the conflict exists and will cause
40 a violation of the identified standard.

41 (5) Violations of permit limitations causing no significant harm to the
42 environment or risk to the public health, safety, or welfare for which
43 no enforcement action or civil penalty could have been imposed under
44 any written civil enforcement guidelines in use by the Department at

1 the time, including but not limited to, guidelines for the pretreatment
2 permit civil penalties. This subdivision shall not be construed to
3 require the Department to develop or use written civil enforcement
4 guidelines.

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

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

17 ~~(f)~~ Any person who ~~willfully or~~ negligently violates any classification,
18 standard or limitation established pursuant to G.S. 143-214.1, 143-
19 214.2, or 143-215; any term, condition, or requirement of a permit
20 issued pursuant to G.S. 143-215.1 or of a special order or other
21 appropriate document issued pursuant to G.S. 143-215.2; or any rule
22 of the Commission implementing any of the said sections, shall be
23 guilty of a misdemeanor punishable by a fine not to exceed fifteen
24 thousand dollars (\$15,000) per day of violation, provided that such
25 fine shall not exceed a cumulative total of two hundred thousand
26 dollars (\$200,000) for each period of 30 days during which a
27 violation continues, or by imprisonment not to exceed six months, or
28 by both.

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

41 (h) (1) Any person who knowingly violates any classification,
42 standard, or limitation established in the rules of the Commission
43 pursuant to G.S. 143-214.1, 143-214.2, 143-215, or any term,
44 condition, or requirement of a permit issued pursuant to G.S. 143-

1 215.1 or of a special order or other appropriate document issued
2 pursuant to G.S. 143-215.2 and who knows at that time that he
3 thereby places another person in imminent danger of death or serious
4 bodily injury shall be guilty of a Class H felony, punishable by a fine
5 not to exceed two hundred fifty thousand dollars (\$250,000) per day
6 of violation, provided that this fine shall not exceed a cumulative
7 total of one million dollars (\$1,000,000) for each period of 30 days
8 during which a violation continues, or by imprisonment not to
9 exceed 10 years, or by both.

10 (2) For the purposes of this subsection, a person's state of mind is knowing
11 with respect to:

- 12 a. His conduct, if he is aware of the nature of his conduct;
13 b. An existing circumstance, if he is aware or believes that the
14 circumstance exists; or
15 c. A result of his conduct, if he is aware or believes that his
16 conduct is substantially certain to cause danger of death or
17 serious bodily injury.

18 (3) Under this subsection, in determining whether a defendant who is a
19 natural person knew that his conduct placed another person in
20 imminent danger of death or serious bodily injury:

- 21 a. The person is responsible only for actual awareness or actual
22 belief that he possessed; and
23 b. Knowledge possessed by a person other than the defendant but
24 not by the defendant himself may not be attributed to the
25 defendant.

26 (4) It is an affirmative defense to a prosecution under this subsection that
27 the conduct charged was conduct consented to by the person
28 endangered and that the danger and conduct charged were reasonably
29 foreseeable hazards of an occupation, a business, or a profession; or of
30 medical treatment or medical or scientific experimentation conducted
31 by professionally approved methods and such other person had been
32 made aware of the risks involved prior to giving consent. The
33 defendant may establish an affirmative defense under this subdivision
34 by a preponderance of the evidence.

35 (2) (i) Any person who knowingly makes any false statement, representation, or
36 certification in any application, record, report, plan, or other document filed or required
37 to be maintained under this Article or a rule implementing this Article, Article; or who
38 knowingly makes a false statement of a material fact in a rulemaking proceeding or
39 contested case under this Article; or who falsifies, tampers with, or knowingly renders
40 inaccurate any recording or monitoring device or method required to be operated or
41 maintained under this Article or regulations-rules of the Commission implementing this
42 Article, Article shall be guilty of a misdemeanor punishable by a fine not to exceed ten
43 thousand dollars (\$10,000), or by imprisonment not to exceed six months, or by both.

1 ~~(3)~~ (j) Any person convicted of an a felony offense under either subdivision (1) or
2 subdivision (2) of this subsection ~~subsections (g), (h), or (i) of this section~~ following a
3 previous felony conviction under such subdivision ~~this section~~ shall be subject to a fine,
4 or imprisonment, or both, not exceeding twice the amount of the fine, or twice the term
5 of imprisonment provided in the ~~subdivision~~ subsection under which the second or
6 subsequent conviction occurs."

7 Sec. 3. G.S. 143-215.6(c) is recodified as G.S. 143-215.6C and reads as
8 rewritten:

9 **"§ 143-215.6C. Enforcement procedures: injunctive relief.**

10 ~~(e)~~ Injunctive Relief.—Whenever the Department has reasonable cause to believe
11 that any person has violated or is threatening to violate any of the provisions of this
12 Part, any of the terms of any permit issued pursuant to this Part, or a rule implementing
13 this Part, the Department may, either before or after the institution of any other action or
14 proceeding authorized by this Part, request the Attorney General to institute a civil
15 action in the name of the State upon the relation of the Department for injunctive relief
16 to restrain the violation or threatened violation and for such other and further relief in
17 the premises as the court shall deem proper. The Attorney General may institute such
18 action in the superior court of the county in which the violation occurred or may occur
19 or, in his discretion, in the superior court of the county in which the person responsible
20 for the violation or threatened violation resides or has his or its principal place of
21 business. Upon a determination by the court that the alleged violation of the provisions
22 of this Part or the regulations of the Commission has occurred or is threatened, the court
23 shall grant the relief necessary to prevent or abate the violation or threatened violation.
24 Neither the institution of the action nor any of the proceedings thereon shall relieve any
25 party to such proceedings from any penalty prescribed for violation of this Part. For
26 purposes of this ~~subsection~~ section references to 'this Part' include G.S. 143-355(k)
27 relating to water use information."

28 Sec. 4. G.S. 143-215.114(a) is recodified as G.S. 143-215.114A and reads as
29 rewritten:

30 **"§ 143-215.114A. Enforcement procedures: civil penalties.**

31 ~~(a)~~ Civil Penalties.—

32 ~~(+)~~ (a) A civil penalty of not more than five thousand dollars (\$5,000) may be
33 assessed against any person who:

34 ~~a.~~(1) Violates any classification, standard or limitation established pursuant
35 to G.S. 143-215.107;

36 ~~b.~~(2) Is required but fails to apply for or to secure a permit required by G.S.
37 143-215.108 or who violates or fails to act in accordance with the
38 terms, conditions, or requirements of such permit;

39 ~~e.~~(3) Violates or fails to act in accordance with the terms, conditions, or
40 requirements of any special order or other appropriate document issued
41 pursuant to G.S. 143-215.110;

42 ~~d.~~(4) Fails to file, submit, or make available, as the case may be, any
43 documents, data or reports required by this Article or Article 21 of this
44 Chapter;

1 ~~£(5)~~ Violates a rule of the Commission or a local governing body
2 implementing this Article.

3 (6) Violates the offenses set out in G.S. 143-215.114B.

4 (2) (b) Each day of continuing violation after written notification from the
5 Commission shall be considered a separate offense.

6 (3) (c) In determining the amount of the penalty the Commission shall consider
7 the degree and extent of harm caused by the violation, the cost of rectifying the damage,
8 and the amount of money the violator saved by not having made the necessary
9 expenditures to comply with the appropriate pollution control requirements.

10 (4) (d) The Commission, or, if authorized by the Commission, the Department,
11 may assess the penalties provided for in this ~~subsection~~-section. Any person assessed
12 shall be notified of the assessment by registered or certified mail, and the notice shall
13 specify the reasons for the assessment. If the person assessed fails to pay the amount of
14 the assessment to the Department within 30 days after receipt of notice, or such longer
15 period, not to exceed 180 days, as the Commission may specify, the Commission may
16 institute a civil action in the Superior Court of Wake County to recover the amount of
17 the assessment."

18 Sec. 5. G.S. 143-215.114(b) is recodified as G.S. 143-215.114B and reads as
19 rewritten:

20 **"§ 143-215.114B. Enforcement procedures: criminal penalties.**

21 (b) ~~Criminal Penalties.~~—

22 (4) (a) For purposes of this ~~subsection~~-section, the term 'person' shall mean, in
23 addition to the definition contained in G.S. 143-213, any responsible corporate or public
24 officer or employee; provided, however, that where a vote of the people is required to
25 effectuate the intent and purpose of this Article by a county, city, town, or other political
26 subdivision of the State, and the vote on the referendum is against the means or
27 machinery for carrying said intent and purpose into effect, then, and only then, this
28 ~~subsection~~-section shall not apply to elected officials or to any responsible appointed
29 officials or employees of such county, city, town, or political subdivision.

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

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

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

41 (1) A natural disaster or other act of God which could not have been
42 prevented or avoided by the exercise of due care or foresight.

43 (2) An act of third parties other than agents, employees, contractors, or
44 subcontractors of the defendant.

- 1 (3) An act done in reliance on the written advice or emergency on-site
2 direction of an employee of the Department. In emergencies, oral
3 advice may be relied upon if written confirmation is delivered to
4 the employee as soon as practicable after receiving and relying on
5 the advice.
- 6 (4) An act causing no significant harm to the environment or risk to the
7 public health, safety, or welfare and done in compliance with other
8 conflicting environmental requirements or other constraints
9 imposed in writing by environmental agencies or officials after
10 written notice is delivered to all relevant agencies that the conflict
11 exists and will cause a violation of the identified standard.
- 12 (5) Violations of permit limitations causing no significant harm to the
13 environment or risk to the public health, safety, or welfare for
14 which no enforcement action or civil penalty could have been
15 imposed under any written civil enforcement guidelines in use by
16 the Department at the time, including but not limited to, guidelines
17 for the pretreatment permit civil penalties. This subdivision shall
18 not be construed to require the Department to develop or use
19 written civil enforcement guidelines.
- 20 (6) Occasional, inadvertent, short-term violations of permit limitations
21 causing no significant harm to the environment or risk to the public
22 health, safety, or welfare. If the violation occurs within 30 days of
23 a prior violation or lasts for more than 24 hours, it is not an
24 occasional, short-term violation.
- 25 (e) All general defenses, affirmative defenses, and bars to prosecution that may
26 apply with respect to other criminal offenses under State criminal offenses may apply to
27 prosecutions brought under this section or other criminal statutes that refer to this
28 section and shall be determined by the courts of this State according to the principles of
29 common law as they may be applied in the light of reason and experience. Concepts of
30 justification and excuse applicable under this section may be developed in the light of
31 reason and experience.
- 32 (†) (f) ~~Any person who willfully or~~ negligently violates any classification,
33 standard or limitation established pursuant to G.S. 143-215.107; any term, condition, or
34 requirement of a permit issued pursuant to G.S. 143-215.108 or of a special order or
35 other appropriate document issued pursuant to G.S. 143-215.110 or any rule of the
36 Commission implementing any of the said section, shall be guilty of a misdemeanor
37 punishable by a fine not to exceed fifteen thousand dollars (\$15,000) per day of
38 violation, provided that such fine shall not exceed a cumulative total of two hundred
39 thousand dollars (\$200,000) for each period of 30 days during which a violation
40 continues, or by imprisonment not to exceed six months, or by both.
- 41 (g) Any person who knowingly and willfully violates any classification, standard,
42 or limitation established in the rules of the Commission pursuant to G.S. 143-215.107 or
43 any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or
44 of a special order or other appropriate document issued pursuant to G.S. 143-215.110,

1 shall be guilty of a Class J felony, punishable by a fine not to exceed one hundred
2 thousand dollars (\$100,000) per day of violation, provided that this fine shall not exceed
3 a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30
4 days during which a violation continues, or by imprisonment not to exceed three years,
5 or by both. For the purposes of this subsection, the phrase 'knowingly and willfully'
6 shall mean intentionally and consciously as the courts of this State, according to the
7 principles of common law, interpret the phrase in the light of reason and experience.

8 (h) (1) Any person who knowingly violates any classification,
9 standard, or limitation established in the rules of the Commission
10 pursuant to G.S. 143-215.107 or any term, condition, or
11 requirement of a permit issued pursuant to G.S. 143-215.108 or of
12 a special order or other appropriate document issued pursuant to
13 G.S. 143-215.110 and who knows at that time that he thereby
14 places another person in imminent danger of death or serious
15 bodily injury shall be guilty of a Class H felony, punishable by a
16 fine not to exceed two hundred fifty thousand dollars (\$250,000)
17 per day of violation, provided that this fine shall not exceed a
18 cumulative total of one million dollars (\$1,000,000) for each period
19 of 30 days during which a violation continues, or by imprisonment
20 not to exceed 10 years or by both.

21 (2) For the purposes of this subsection, a person's state of mind is
22 knowing with respect to:

- 23 a. His conduct, if he is aware of the nature of his conduct;
24 b. An existing circumstance, if he is aware or believes that the
25 circumstance exists; or
26 c. A result of his conduct, if he is aware or believes that his
27 conduct is substantially certain to cause danger of death or
28 serious bodily injury.

29 (3) Under this subsection, in determining whether a defendant who is a
30 natural person knew that his conduct placed another person in
31 imminent danger of death or serious bodily injury:

- 32 a. The person is responsible only for actual awareness or actual
33 belief that he possessed; and
34 b. Knowledge possessed by a person other than the defendant but
35 not by the defendant himself may not be attributed to the
36 defendant.

37 (4) It is an affirmative defense to a prosecution under this subsection
38 that the conduct charged was conduct consented to by the person
39 endangered and that the danger and conduct charged were
40 reasonably foreseeable hazards of an occupation, a business, or a
41 profession; or of medical treatment or medical or scientific
42 experimentation conducted by professionally approved methods
43 and such other person had been made aware of the risks involved
44 prior to giving consent. The defendant may establish an

1 affirmative defense under this subdivision by a preponderance of
2 the evidence.

3 (2) (i) Any person who knowingly makes any false statement, representation, or
4 certification in any application, record, report, plan, or other document filed or required
5 to be maintained under this Article and Article 21, or a rule implementing this Article
6 and Article 21, ~~21~~; or who knowingly makes a false statement of a material fact in a
7 rulemaking or contested case under this Article or Article 21; or who falsifies, tampers
8 with, or knowingly renders inaccurate any recording or monitoring device or method
9 required to be operated or maintained under this Article and Article 21 ~~or regulations or~~
10 rules of the Commission implementing this Article and Article 21, shall be guilty of a
11 misdemeanor punishable by a fine not to exceed ten thousand dollars (\$10,000), or by
12 imprisonment not to exceed six months, or by both.

13 (3) (j) Any person convicted of ~~an a~~ felony offense under ~~either subdivision (1) or~~
14 ~~subdivision (2) of this subsection~~ subsections (g), (h), or (i) of this section following a
15 previous felony conviction under such subdivision this section shall be subject to a fine,
16 or imprisonment, or both, not exceeding twice the amount of the fine or twice the term
17 of imprisonment provided in the ~~subdivision~~ subsection under which the second or
18 subsequent conviction occurs."

19 Sec. 6. G.S. 143-215.114(c) is recodified as G.S. 143-215.114C and reads as
20 rewritten:

21 "**§ 143-215.114C. Enforcement procedures: injunctive relief.**

22 (e) ~~Injunctive Relief.~~—Whenever the Department has reasonable cause to believe
23 that any person has violated or is threatening to violate any of the provisions of this
24 Article or Article 21 of this Chapter or a rule implementing this Article or Article 21 of
25 this Chapter, the Department, either before or after the institution of any other action or
26 proceeding authorized by this Article or Article 21 of this Chapter, may request the
27 Attorney General to institute a civil action in the name of the State upon the relation of
28 the Department for injunctive relief to restrain the violation or threatened violation and
29 for such other and further relief in the premises as the court shall deem proper. The
30 Attorney General may institute such action in the Superior Court of Wake County, or, in
31 his discretion, in the superior court of the county in which the violation occurred or may
32 occur. Upon a determination by the court that the alleged violation of the provisions of
33 this Article or Article 21 of this Chapter or the regulation of the Commission has
34 occurred or is threatened, the court shall grant the relief necessary to prevent or abate
35 the violation or threatened violation. Neither the institution of the action nor any of the
36 proceedings thereon shall relieve any party to such proceedings from any penalty
37 prescribed for violation of this Article or Article 21 of this Chapter."

38 Sec. 7. G.S. 143-215.91(a) and G.S. 143.91(c) are recodified as G.S. 143-
39 215.88A and read as rewritten:

40 "**§ 143.215.88A. Enforcement procedures: civil penalties.**

41 (a) ~~Civil Penalties.~~—Any person who intentionally or negligently discharges oil or
42 other hazardous substances, or knowingly causes or permits the discharge of oil in
43 violation of this Part or fails to report a discharge as required by G.S. 143-215.85 or
44 who fails to comply with the requirements of G.S. 143-215.84(a) or orders issued by the

1 Commission as a result of violations thereof, shall incur, in addition to any other penalty
2 provided by law, a penalty in an amount not to exceed five thousand dollars (\$5,000) for
3 every such violation, the amount to be determined by the Commission after taking into
4 consideration the gravity of the violation, the previous record of the violator in
5 complying or failing to comply with the provisions of this Part as well as G.S. 143-
6 215.1, the amount expended by the violator in complying with the provisions of G.S.
7 143-215.84, the estimated damages attributed to the violator under G.S. 143-215.90, and
8 such other considerations as the Commission deems appropriate. Every act or omission
9 which causes, aids or abets a violation of this ~~section~~-subsection shall be considered a
10 violation under the provisions of this ~~section~~-subsection and subject to the penalty herein
11 provided. The penalty herein provided for shall become due and payable when the
12 person incurring the penalty receives a notice in writing from the Commission
13 describing the violation with reasonable particularity and advising such person that the
14 penalty is due. A person may contest a penalty by filing a petition for a contested case
15 under G.S. 150B-23 within 30 days after receiving notice of the penalty. If a person
16 fails to pay a penalty assessed against him, the Department shall refer the matter to the
17 Attorney General for collection. Notification received pursuant to this subsection or
18 information obtained by the exploitation of such notification shall not be used against
19 any person in any criminal case, except as prosecution for perjury or for giving a false
20 statement.

21 ~~(e)~~ (b) The civil and ~~criminal~~ penalties provided by this ~~section~~ ~~(except the civil~~
22 ~~penalty for failure to report)~~-section, except the civil penalty for failure to report, shall not
23 apply to the discharge of a pesticide regulated by the North Carolina Pesticide Board, if
24 such discharge would constitute a violation of the North Carolina Pesticide Law and if
25 such discharge has not entered the surface waters of the State."

26 Sec. 8. G.S. 143-215.91(b) is recodified as G.S. 143-215.88B and reads as
27 rewritten:

28 "**§ 143-215.88B. Enforcement procedures: criminal penalties.**

29 ~~(b)~~ Criminal Penalties.—

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

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

37 (c) For the purposes of the felony provisions of this section, a person's state of
38 mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is
39 the subject of the prosecution is the result of any of the following occurrences or
40 circumstances:

41 (1) A natural disaster or other act of God which could not have been
42 prevented or avoided by the exercise of due care or foresight.

43 (2) An act of third parties other than agents, employees, contractors, or
44 subcontractors of the defendant.

1 (3) An act done in reliance on the written advice or emergency on-site
2 direction of an employee of the Department. In emergencies, oral
3 advice may be relied upon if written confirmation is delivered to
4 the employee as soon as practicable after receiving and relying on
5 the advice.

6 (4) An act causing no significant harm to the environment or risk to the
7 public health, safety, or welfare and done in compliance with other
8 conflicting environmental requirements or other constraints
9 imposed in writing by environmental agencies or officials after
10 written notice is delivered to all relevant agencies that the conflict
11 exists and will cause a violation of the identified standard.

12 (5) Violations of permit limitations causing no significant harm to the
13 environment or risk to the public health, safety, or welfare for
14 which no enforcement action or civil penalty could have been
15 imposed under any written civil enforcement guidelines in use by
16 the Department at the time, including but not limited to, guidelines
17 for the pretreatment permit civil penalties. This subdivision shall
18 not be construed to require the Department to develop or use
19 written civil enforcement guidelines.

20 (d) All general defenses, affirmative defenses, and bars to prosecution that may
21 apply with respect to other criminal offenses under State criminal offenses may apply to
22 prosecutions brought under this section or other criminal statutes that refer to this
23 section and shall be determined by the courts of this State according to the principles of
24 common law as they may be applied in the light of reason and experience. Concepts of
25 justification and excuse applicable under this section may be developed in the light of
26 reason and experience.

27 (e) ~~Any person who intentionally or knowingly and willfully or willfully~~
28 discharges or causes or permits the discharge of oil or other hazardous substances in
29 violation of this Part shall be guilty of a ~~misdemeanor~~ Class J felony punishable by
30 imprisonment not to exceed ~~six months~~ three years or by fine to be not more than ~~ten~~
31 ~~thousand dollars (\$10,000), one hundred thousand dollars (\$100,000) per day of violation,~~
32 provided that this fine shall not exceed a cumulative total of five hundred thousand
33 dollars (\$500,000) for each period of 30 days during which a violation continues, or by
34 both, in the discretion of the court. ~~No proceeding shall be brought or continued under this~~
35 ~~subsection for or on account of a violation by any person who has previously been convicted of~~
36 ~~a federal violation or a local ordinance violation based upon the same set of facts.~~ For the
37 purposes of this subsection, the phrase 'knowingly and willfully' shall mean
38 intentionally and consciously as the courts of this State, according to the principles of
39 common law interpret the phrase in the light of reason and experience.

40 (f) (1) Any person who knowingly discharges or causes or permits
41 the discharge of oil or other hazardous substances in violation of
42 this Part, and who knows at that time that he places another person
43 in imminent danger of death or serious bodily injury shall be guilty
44 of a Class H felony punishable by imprisonment not to exceed 10

1 years or by fine not to exceed two hundred fifty thousand dollars
2 (\$250,000) per day of violation, provided that this fine shall not
3 exceed a cumulative total of one million dollars (\$1,000,000) for
4 each period of 30 days during which a violation continues, or by
5 both, in the discretion of the court.

6 (2) For the purposes of this subsection, a person's state of mind is
7 knowing with respect to:

- 8 a. His conduct, if he is aware of the nature of his conduct;
9 b. An existing circumstance, if he is aware or believes that the
10 circumstance exists; or
11 c. A result of his conduct, if he is aware or believes that his
12 conduct is substantially certain to cause danger of death or
13 serious bodily injury.

14 (3) Under this subsection, in determining whether a defendant who is a
15 natural person knew that his conduct placed another person in
16 imminent danger of death or serious bodily injury:

- 17 a. The person is responsible only for actual awareness or actual
18 belief that he possessed; and
19 b. Knowledge possessed by a person other than the defendant but
20 not by the defendant himself may not be attributed to the
21 defendant.

22 (4) It is an affirmative defense to a prosecution under this subsection
23 that the conduct charged was conduct consented to by the person
24 endangered and that the danger and conduct charged were
25 reasonably foreseeable hazards of an occupation, a business, or a
26 profession; or of medical treatment or medical or scientific
27 experimentation conducted by professionally approved methods
28 and such other person had been made aware of the risks involved
29 prior to giving consent. The defendant may establish an
30 affirmative defense under this subdivision by a preponderance of
31 the evidence.

32 (g) The criminal penalties provided by this section shall not apply to the
33 discharge of a pesticide regulated by the North Carolina Pesticide Board, if such
34 discharge would constitute a violation of the North Carolina Pesticide Law and if such
35 discharge has not entered the surface waters of the State."

36 Sec. 9. Part 2 of Article 1 of Chapter 130A of the General Statutes is
37 amended by adding a new section to read:

38 "**§ 130A-26.1. Criminal violation of Article 9.**

39 (a) The definition of 'person' set out in G.S. 130A-290 shall apply to this section.
40 In addition, for purposes of this section, the term 'person' shall also include any
41 responsible corporate or public officer or employee.

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

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

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

9 (1) A natural disaster or other act of God which could not have been
10 prevented or avoided by the exercise of due care or foresight.

11 (2) An act of third parties other than agents, employees, contractors, or
12 subcontractors of the defendant.

13 (3) An act done in reliance on the written advice or emergency on-site
14 direction of an employee of the Department. In emergencies, oral
15 advice may be relied upon if written confirmation is delivered to
16 the employee as soon as practicable after receiving and relying on
17 the advice.

18 (4) An act causing no significant harm to the environment or risk to the
19 public health, safety, or welfare and done in compliance with other
20 conflicting environmental requirements or other constraints
21 imposed in writing by environmental agencies or officials after
22 written notice is delivered to all relevant agencies that the conflict
23 exists and will cause a violation of the identified standard.

24 (5) Violations of permit limitations causing no significant harm to the
25 environment or risk to the public health, safety, or welfare for
26 which no enforcement action or civil penalty could have been
27 imposed under any written civil enforcement guidelines in use by
28 the Department at the time, including but not limited to, guidelines
29 for the pretreatment permit civil penalties. This subdivision shall
30 not be construed to require the Department to develop or use
31 written civil enforcement guidelines.

32 (e) All general defenses, affirmative defenses, and bars to prosecution that may
33 apply with respect to other criminal offenses under State criminal offenses may apply to
34 prosecutions brought under this section or other criminal statutes that refer to this
35 section and shall be determined by the courts of this State according to the principles of
36 common law as they may be applied in the light of reason and experience. Concepts of
37 justification and excuse applicable under this section may be developed in the light of
38 reason and experience.

39 (f) Any person who knowingly and willfully does any of the following shall be
40 guilty of a Class I felony, punishable by a fine not to exceed one hundred thousand
41 dollars (\$100,000) per day of violation, provided that this fine shall not exceed a
42 cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days
43 during which a violation continues, or by imprisonment not to exceed five years, or by
44 both:

1 (1) Transports or causes to be transported any hazardous waste
2 identified or listed under G.S. 130A-294(c) to a facility which does
3 not have a permit or interim status under G.S. 130A-294(c) or 42
4 U.S.C. § 6921, et seq.

5 (2) Transports or causes to be transported such hazardous waste with
6 the intent of delivery to a facility without a permit.

7 (3) Treats, stores, or disposes of such hazardous waste without a
8 permit or interim status under G.S. 130A-294(c) or 42 U.S.C. §
9 6921, et seq., or in knowing violation of any material condition or
10 requirement or such permit or applicable interim status rules.

11 (g) Any person who knowingly and willfully does any of the following shall be
12 guilty of a Class J felony, punishable by a fine not to exceed one hundred thousand
13 dollars (\$100,000) per day of violation, provided that the fine shall not exceed a
14 cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days
15 during which a violation continues, or by imprisonment not to exceed three years, or by
16 both:

17 (1) Transports or causes to be transported hazardous waste without a
18 manifest as required under G.S. 130A-294(c).

19 (2) Transports hazardous waste without a United States Environmental
20 Protection Agency identification number as required by rules
21 promulgated under G.S. 130A-294(c).

22 (3) Omits material information or makes any false material statement
23 or representation in any application, label, manifest, record, report,
24 permit, or other document filed, maintained, or used for purposes
25 of compliance with rules promulgated under G.S. 130A-294(c).

26 (4) Generates, stores, treats, transports, disposes of, exports, or
27 otherwise handles any hazardous waste or any used oil burned for
28 energy recovery and who knowingly destroys, alters, conceals, or
29 fails to file any record, application, manifest, report, or other
30 document required to be maintained or filed for purposes of
31 compliance with rules promulgated under G.S. 130A-294(c).

32 (h) For the purposes of subsections (f) and (g) of this section, the phrase
33 'knowingly and willfully' shall mean intentionally and consciously as the courts of this
34 State, according to the principles of common law interpret the phrase in the light of
35 reason and experience.

36 (i) (1) Any person who knowingly transports, treats, stores,
37 disposes of, or exports any hazardous waste or used oil regulated
38 under G.S. 130A-294(c) in violation of subsection (f) or (g) of this
39 section, who knows at the time that he thereby places another
40 person in imminent danger of death or personal bodily injury shall
41 be guilty of a Class H felony punishable by imprisonment not to
42 exceed 10 years or by fine not to exceed two hundred fifty
43 thousand dollars (\$250,000) per day of violation, provided that this
44 fine shall not exceed a cumulative total of one million dollars

- 1 (\$1,000,000) for each period of 30 days during which a violation
2 continues, or by both, in the discretion of the court.
- 3 (2) For the purposes of this subsection, a person's state of mind is
4 knowing with respect to:
- 5 a. His conduct, if he is aware of the nature of his conduct;
6 b. An existing circumstance, if he is aware or believes that the
7 circumstance exists; or
8 c. A result of his conduct, if he is aware or believes that his
9 conduct is substantially certain to cause danger of death or
10 serious bodily injury.
- 11 (3) Under this subsection, in determining whether a defendant who is a
12 natural person knew that his conduct placed another person in
13 imminent danger of death or serious bodily injury:
- 14 a. The person is responsible only for actual awareness or actual
15 belief that he possessed; and
16 b. Knowledge possessed by a person other than the defendant but
17 not by the defendant himself may not be attributed to the
18 defendant.
- 19 (4) It is an affirmative defense to a prosecution under this subsection
20 that the conduct charged was conduct consented to by the person
21 endangered and that the danger and conduct charged were
22 reasonably foreseeable hazards of an occupation, a business, or a
23 profession; or of medical treatment or medical or scientific
24 experimentation conducted by professionally approved methods
25 and such other person had been made aware of the risks involved
26 prior to giving consent. The defendant may establish an
27 affirmative defense under this subdivision by a preponderance of
28 the evidence.

29 (j) Any person convicted of an offense under subsection (f), (g), or (h) of this
30 section following a previous conviction under this section shall be subject to a fine, or
31 imprisonment, or both, not exceeding twice the amount of the fine, or twice the term of
32 imprisonment provided in the subsection under which the second or subsequent
33 conviction occurs."

34 Sec. 10. G.S. 143-215.69(b) reads as rewritten:

35 "(b) Civil Penalties. – The Commission may assess a civil penalty against a person
36 who violates this Part or a rule of the Commission implementing this Part. The amount
37 of the penalty shall not exceed the maximum imposed in G.S. ~~143-215.6~~143-215.6A and
38 shall be assessed in accordance with the procedure set out in G.S. ~~143-215.6~~143-215.6A
39 for assessing a civil penalty."

40 Sec. 11. G.S. 113-60.29 reads as rewritten:

41 "**§ 113-60.29. Penalties.**

42 Any person violating the provisions of this Article or of any permit issued under the
43 authority of this Article shall be guilty of a misdemeanor and upon conviction shall be
44 fined not more than fifty dollars (\$50.00) or imprisoned for a period of not more than 30

1 days, or both, in the discretion of the court. The penalties imposed by this section shall
2 be separate and apart and not in lieu of any civil or criminal penalties which may be
3 imposed by ~~G.S. 143-215.114 of Article 21B of Chapter 143 of the General Statutes. G.S.~~
4 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any
5 liability the violator incurs as a result of actions taken by the Department under G.S.
6 113-60.28."

7 Sec. 12. G.S. 143-215.89 reads as rewritten:

8 "**§ 143-215.89. Multiple liability for necessary expenses.**

9 Any person liable for costs of cleanup of oil or other hazardous substances under this
10 Part shall have a cause of action to recover such costs in part or in whole from any other
11 person causing or contributing to the discharge of oil or other hazardous substances into
12 the waters of the State, including any amount recoverable by the State as necessary
13 expenses. The total recovery by the State for damage to the public resources pursuant to
14 ~~G.S. 143-215.91~~ G.S. 143-215.90 and for the cost of oil or other hazardous substances
15 cleanup, arising from any discharge, shall not exceed the applicable limits prescribed by
16 federal law with respect to the United States government on account of such discharge."

17 Sec. 13. The Revisor of Statutes shall correct any cross-reference in the
18 General Statutes to any section or subsection of the General Statutes which is recodified
19 by this act.

20 Sec. 14. This act shall become effective 1 January 1991, and shall apply to
21 offenses committed on or after that date.