

§ 143-215.94W. Enforcement procedures: civil penalties.

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

- (1) Violates any provision of this Part or rule adopted pursuant to this Part.
- (2) Fails to apply for or to secure a permit required by this Part.
- (3) Violates or fails to act in accordance with the terms, conditions, or requirements of any permit issued pursuant to this Part.
- (4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Part.
- (5) 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 or fails to comply with the requirements of G.S. 143B-279.9 through G.S. 143B-279.11.
- (6) Falsifies or tampers with any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.
- (7) Knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.
- (8) Knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Part or a rule implementing this Part.
- (9) Knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under this Part.
- (10) 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 Part.

(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 ten thousand dollars (\$10,000) per day for so long as the violation continues. A penalty for a continuous violation shall not exceed two hundred thousand dollars (\$200,000) for each period of 30 days during which the violation continues.

(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 pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. The Secretary shall make the final decision regarding assessment of a civil penalty under this section.

(e) 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).

(f) 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 (e) 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.

(g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 17.

(h) The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 377, s. 3; 1995 (Reg. Sess., 1996), c. 743, s. 17; 1998-215, s. 69; 2002-90, s. 6.)