

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1399
PROPOSED COMMITTEE SUBSTITUTE H1399-PCS50609-SB-16

Short Title: Capacity Use Areas Enforcement.

(Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CIVIL PENALTIES MAY BE ASSESSED ON A PER WELL BASIS FOR VIOLATION OF CAPACITY USE AREA LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.17(b) reads as rewritten:

"(b) Civil Penalties. –

- (1) The Secretary may assess a civil penalty of not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00) against any person who violates any provisions of, or any order issued pursuant to this Part, or who violates a rule of the Commission implementing this Part. If the violator holds a permit under this Part, the Secretary may assess a civil penalty as provided in this subdivision for each well permitted under this Part for which the violator is the permittee.
- (2) If any action or failure to act for which a penalty may be assessed under this Part is willful, the Secretary may assess a penalty not to exceed two hundred fifty dollars (\$250.00) per day for each day of violation. If the violator holds a permit under this Part, the Secretary may assess a civil penalty as provided in this subdivision for each well permitted under this Part for which the violator is the permittee.
- (3) 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.
- (4) 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.
- (5) 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



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1 Secretary and the violator are unable to resolve the request, the Secretary
2 shall deliver remission requests and his recommended action to the
3 Committee on Civil Penalty Remissions of the Environmental Management
4 Commission appointed pursuant to G.S. 143B-282.1(c).

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

- 18 (7) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 15.

- 19 (8) The clear proceeds of civil penalties assessed pursuant to this subsection
20 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
21 G.S. 115C-457.2."

22 **SECTION 2.** This act is effective when it becomes law.