

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1177

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Environment & Natural Resources Senate Committee Substitute Adopted 7/13/90

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) 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.

~~e.~~(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.

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

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

3 **"§ 143-215.6B. Enforcement procedures: criminal penalties.**

4 (b) ~~Criminal Penalties.—~~

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

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

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

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

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

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

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

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

39 (5) Violations of permit limitations causing no significant harm to the
40 environment or risk to the public health, safety, or welfare for which
41 no enforcement action or civil penalty could have been imposed under
42 any written civil enforcement guidelines in use by the Department at
43 the time, including but not limited to, guidelines for the pretreatment
44 permit civil penalties. This subdivision shall not be construed to

1 require the Department to develop or use written civil enforcement
2 guidelines.

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

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

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

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

39 (h) (1) Any person who knowingly violates any classification,
40 standard, or limitation established in the rules of the Commission
41 pursuant to G.S. 143-214.1, 143-214.2, 143-215, or any term,
42 condition, or requirement of a permit issued pursuant to G.S. 143-
43 215.1 or of a special order or other appropriate document issued
44 pursuant to G.S. 143-215.2 and who knows at that time that he

1 thereby places another person in imminent danger of death or serious
 2 bodily injury shall be guilty of a Class H felony, punishable by a fine
 3 not to exceed two hundred fifty thousand dollars (\$250,000) per day
 4 of violation, provided that this fine shall not exceed a cumulative
 5 total of one million dollars (\$1,000,000) for each period of 30 days
 6 during which a violation continues, or by imprisonment not to
 7 exceed 10 years, or by both.

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

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

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

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

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

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

42 (3) (j) Any person convicted of an a felony offense under either subdivision (1) or
 43 subdivision (2) of this subsection-subsections (g), (h), or (i) of this section following a
 44 previous felony conviction under such subdivision-this section shall be subject to a fine,

1 or imprisonment, or both, not exceeding twice the amount of the fine, or twice the term
2 of imprisonment provided in the ~~subdivision~~subsection under which the second or
3 subsequent conviction occurs."

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

6 **"§ 143-215.6C. Enforcement procedures: injunctive relief.**

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

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

27 **"§ 143-215.114A. Enforcement procedures: civil penalties.**

28 ~~(a)~~ Civil Penalties.—

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

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

33 ~~b.~~(2) Is required but fails to apply for or to secure a permit required by G.S.
34 143-215.108 or who violates or fails to act in accordance with the
35 terms, conditions, or requirements of such permit;

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

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

42 ~~e.~~(5) Violates a rule of the Commission or a local governing body
43 implementing this Article.

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

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

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

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

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

17 **"§ 143-215.114B. Enforcement procedures: criminal penalties.**

18 (b) ~~Criminal Penalties.~~

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

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

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

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

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

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

42 (3) An act done in reliance on the written advice or emergency on-site
43 direction of an employee of the Department. In emergencies, oral
44 advice may be relied upon if written confirmation is delivered to

1 the employee as soon as practicable after receiving and relying on
2 the advice.

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

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

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

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

29 ~~(f)~~ (f) Any person who willfully or negligently violates any classification,
30 standard or limitation established pursuant to G.S. 143-215.107; any term, condition, or
31 requirement of a permit issued pursuant to G.S. 143-215.108 or of a special order or
32 other appropriate document issued pursuant to G.S. 143-215.110 or any rule of the
33 Commission implementing any of the said section, shall be guilty of a misdemeanor
34 punishable by a fine not to exceed fifteen thousand dollars (\$15,000) per day of
35 violation, provided that such fine shall not exceed a cumulative total of two hundred
36 thousand dollars (\$200,000) for each period of 30 days during which a violation
37 continues, or by imprisonment not to exceed six months, or by both.

38 (g) Any person who knowingly and willfully violates any classification, standard,
39 or limitation established in the rules of the Commission pursuant to G.S. 143-215.107 or
40 any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or
41 of a special order or other appropriate document issued pursuant to G.S. 143-215.110,
42 shall be guilty of a Class J felony, punishable by a fine not to exceed one hundred
43 thousand dollars (\$100,000) per day of violation, provided that this fine shall not exceed
44 a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30

1 days during which a violation continues, or by imprisonment not to exceed three years,
2 or by both. For the purposes of this subsection, the phrase 'knowingly and willfully'
3 shall mean intentionally and consciously as the courts of this State, according to the
4 principles of common law, interpret the phrase in the light of reason and experience.

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

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

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

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

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

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

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

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

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

19 **"§ 143-215.114C. Enforcement procedures: injunctive relief.**

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

36 Sec. 7. G.S. 143-215.91(a) and G.S. 143.91(c) are recodified as G.S. 143-
37 215.88A and read as rewritten:

38 **"§ 143.215.88A. Enforcement procedures: civil penalties.**

39 (a) Civil Penalties.—Any person who intentionally or negligently discharges oil or
40 other hazardous substances, or knowingly causes or permits the discharge of oil in
41 violation of this Part or fails to report a discharge as required by G.S. 143-215.85 or
42 who fails to comply with the requirements of G.S. 143-215.84(a) or orders issued by the
43 Commission as a result of violations thereof, shall incur, in addition to any other penalty
44 provided by law, a penalty in an amount not to exceed five thousand dollars (\$5,000) for

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

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

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

26 "**§ 143.215.88B. Enforcement procedures: criminal penalties.**

27 ~~(b)~~ Criminal Penalties.—

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

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

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

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

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

43 (3) An act done in reliance on the written advice or emergency on-site
 44 direction of an employee of the Department. In emergencies, oral

1 advice may be relied upon if written confirmation is delivered to
2 the employee as soon as practicable after receiving and relying on
3 the advice.

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

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

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

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

38 (f) (1) Any person who knowingly discharges or causes or permits
39 the discharge of oil or other hazardous substances in violation of
40 this Part, and who knows at that time that he places another person
41 in imminent danger of death or serious bodily injury shall be guilty
42 of a Class H felony punishable by imprisonment not to exceed 10
43 years or by fine not to exceed two hundred fifty thousand dollars
44 (\$250,000) per day of violation, provided that this fine shall not

1 exceed a cumulative total of one million dollars (\$1,000,000) for
2 each period of 30 days during which a violation continues, or by
3 both, in the discretion of the court.

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

6 a. His conduct, if he is aware of the nature of his conduct;

7 b. An existing circumstance, if he is aware or believes that the
8 circumstance exists; or

9 c. A result of his conduct, if he is aware or believes that his
10 conduct is substantially certain to cause danger of death or
11 serious bodily injury.

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

15 a. The person is responsible only for actual awareness or actual
16 belief that he possessed; and

17 b. Knowledge possessed by a person other than the defendant but
18 not by the defendant himself may not be attributed to the
19 defendant.

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

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

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

36 "**§ 130A-26.1. Criminal violation of Article 9.**

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

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

43 (c) In proving the defendant's possession of actual knowledge, circumstantial
44 evidence may be used, including evidence that the defendant took affirmative steps to

1 shield himself from relevant information. Consistent with the principles of common
2 law, the subjective mental state of defendants may be inferred from their conduct.

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

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

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

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

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

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

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

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

43 (1) Transports or causes to be transported any hazardous waste
44 identified or listed under G.S. 130A-294(c) to a facility which does

1 not have a permit or interim status under G.S. 130A-294(c) or 42
2 U.S.C. § 6921, et seq.

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

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

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

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

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

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

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

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

34 (i) (1) Any person who knowingly transports, treats, stores,
35 disposes of, or exports any hazardous waste or used oil regulated
36 under G.S. 130A-294(c) in violation of subsection (f) or (g) of this
37 section, who knows at the time that he thereby places another
38 person in imminent danger of death or personal bodily injury shall
39 be guilty of a Class H felony punishable by imprisonment not to
40 exceed 10 years or by fine not to exceed two hundred fifty
41 thousand dollars (\$250,000) per day of violation, provided that this
42 fine shall not exceed a cumulative total of one million dollars
43 (\$1,000,000) for each period of 30 days during which a violation
44 continues, or by both, in the discretion of the court.

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

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

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

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

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

39 "**§ 113-60.29. Penalties.**

40 Any person violating the provisions of this Article or of any permit issued under the
41 authority of this Article shall be guilty of a misdemeanor and upon conviction shall be
42 fined not more than fifty dollars (\$50.00) or imprisoned for a period of not more than 30
43 days, or both, in the discretion of the court. The penalties imposed by this section shall
44 be separate and apart and not in lieu of any civil or criminal penalties which may be

1 imposed by ~~G.S. 143-215.114 of Article 21B of Chapter 143 of the General Statutes. G.S.~~
2 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any
3 liability the violator incurs as a result of actions taken by the Department under G.S.
4 113-60.28."

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

6 "**§ 143-215.89. Multiple liability for necessary expenses.**

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

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

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