

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

S

D

SENATE DRS55217-LD-35F (03/01)

Short Title: Sedimentation Civil Penalty Cap & Remissions.

(Public)

Sponsors: Senators Daniel, Brock, and Rouzer (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A MAXIMUM CUMULATIVE TOTAL CIVIL PENALTY PER LAND-DISTURBING PROJECT FOR A FIRST-TIME VIOLATION UNDER THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973, TO AUTHORIZE THE REMISSION OF CIVIL PENALTIES UNDER THIS ACT, TO REQUIRE THAT A PERSON ASSESSED A CIVIL PENALTY IS NOTIFIED OF THE OPTION TO REQUEST A REMISSION OF THE CIVIL PENALTY AND, FOR FIRST-TIME VIOLATORS, NOTIFIED THAT FIRST-TIME VIOLATORS CANNOT BE ASSESSED MORE THAN A MAXIMUM CIVIL PENALTY WHEN ANY CONTINUING ENVIRONMENTAL DAMAGE IS ABATED WITHIN ONE HUNDRED EIGHTY DAYS, AND TO REQUIRE THAT FIRST-TIME VIOLATORS BE OFFERED ASSISTANCE IN DEVELOPING CORRECTIVE MEASURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-54 is amended by adding a new subsection to read:

"(g) The Commission is authorized to make the final decision on a request for the remission of a civil penalty under G.S. 113A-65.2."

SECTION 2. G.S. 113A-64(a) reads as rewritten:

"(a) Civil Penalties. –

(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).



1 (2) The Secretary or a local government that administers an erosion and
2 sedimentation control program approved under G.S. 113A-60 shall
3 determine the amount of the civil penalty and shall notify the person who is
4 assessed the civil penalty of the amount of the ~~penalty and penalty~~, the reason
5 for assessing the ~~penalty-penalty~~, the option available to that person to
6 request a remission of the civil penalty under G.S. 113A-65.2, the date of the
7 deadline for that person to make the request regarding this particular penalty,
8 and, when that person has not been assessed any civil penalty under this
9 section for any previous violation, the date of the deadline for that person to
10 abate continuing environmental damage resulting from the violation in order
11 to be subject to the maximum cumulative total civil penalty under
12 subdivision (1) of this subsection. The notice of assessment shall be served
13 by any means authorized under G.S. 1A-1, Rule 4, and shall direct the
14 violator to either pay the assessment or contest the assessment within 30
15 days by filing a petition for a contested case under Article 3 of Chapter 150B
16 of the General Statutes. If a violator does not pay a civil penalty assessed by
17 the Secretary within 30 days after it is due, the Department shall request the
18 Attorney General to institute a civil action to recover the amount of the
19 assessment. If a violator does not pay a civil penalty assessed by a local
20 government within 30 days after it is due, the local government may institute
21 a civil action to recover the amount of the assessment. The civil action may
22 be brought in the superior court of any county where the violation occurred
23 or the violator's residence or principal place of business is located. A civil
24 action must be filed within three years of the date the assessment was due.
25 An assessment that is not contested is due when the violator is served with a
26 notice of assessment. An assessment that is contested is due at the
27 conclusion of the administrative and judicial review of the assessment.

28 "

29 **SECTION 3.** Article 4 of Chapter 113A of the General Statutes is amended by
30 adding a new section to read:

31 **"§ 113A-65.2. Remission of civil penalties.**

32 (a) A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed
33 with the Commission within 60 days of receipt of the notice of assessment. A remission request
34 must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter
35 150B of the General Statutes and a stipulation of the facts on which the assessment was based.

36 (b) The following factors shall be considered in determining whether a civil penalty
37 remission request will be approved:

- 38 (1) Whether one or more of the civil penalty assessment factors in
39 G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.
- 40 (2) Whether the petitioner promptly abated continuing environmental damage
41 resulting from the violation.
- 42 (3) Whether the violation was inadvertent or a result of an accident.
- 43 (4) Whether the petitioner had been assessed civil penalties for any previous
44 violations.
- 45 (5) Whether payment of the civil penalty will prevent payment for necessary
46 remedial actions or would otherwise create a significant financial hardship.
- 47 (6) The assessed property tax valuation of the petitioner's property upon which
48 the violation occurred, excluding the value of any structures located on the
49 property.

1 (c) The petitioner has the burden of coming forward with information concerning the
2 financial impact of a civil penalty on the petitioner and the burden of showing the petitioner's
3 financial hardship.

4 (d) The Commission may remit the entire amount of the penalty only when the
5 petitioner has not been assessed civil penalties for previous violations and payment of the civil
6 penalty will prevent payment for necessary remedial actions.

7 (e) The Commission may not impose a penalty under this section that is in excess of the
8 civil penalty imposed by the Department."

9 **SECTION 4.** G.S. 113A-61.1(c) reads as rewritten:

10 "(c) If the Secretary, a local government that administers an erosion and sedimentation
11 control program approved under G.S. 113A-60, or other approving authority determines that
12 the person engaged in the land-disturbing activity has failed to comply with this Article, the
13 Secretary, local government, or other approving authority shall immediately serve a notice of
14 violation upon that person. The notice may be served by any means authorized under
15 G.S. 1A-1, Rule 4. A notice of violation shall specify a date by which the person must comply
16 with this Article and inform the person of the actions that need to be taken to comply with this
17 Article. Any person who fails to comply within the time specified is subject to additional civil
18 and criminal penalties for a continuing violation as provided in G.S. 113A-64. If the person
19 engaged in the land-disturbing activity has not received a previous notice of violation under this
20 section, the Department, local government, or other approving authority shall deliver the notice
21 of violation in person and shall offer assistance in developing corrective measures. Assistance
22 may be provided by referral to a technical assistance program in the Department, referral to a
23 cooperative extension program, or by the provision of written materials such as Department
24 guidance documents. If the Department, local government, or other approving authority is
25 unable to deliver the notice of violation in person within 15 days following discovery of the
26 violation, the notice of violation may be served in the manner prescribed for service of process
27 by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing
28 corrective measures."

29 **SECTION 5.** This act is effective when it becomes law and applies to civil
30 penalties paid on or after that date.