

NORTH CAROLINA GENERAL ASSEMBLY
1989 SESSION

CHAPTER 1045
HOUSE BILL 1177

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)~~ (a) ~~Civil Penalties.—~~

~~(1)(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.
- ~~d.~~ (4) Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or G.S. 143-355(k) relating to water use information.
- ~~e.~~ (5) 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 Article.
- ~~f.~~ (6) Violates a rule of the Commission implementing this Part or G.S. 143-355(k).
- ~~g.~~ (7) Violates or fails to act in accordance with the statewide minimum water supply watershed management requirements adopted pursuant to G.S. 143-214.5, whether enforced by the Commission or a local government.
- (8) Violates the offenses set out in G.S. 143-215.6B.

~~(2)(b)~~ If any action or failure to act for which a penalty may be assessed under this ~~subsection-section~~ is continuous, the Commission may assess a penalty not to exceed ten thousand dollars (\$10,000) per day for so long as the violation continues, unless otherwise stipulated.

~~(3)(c)~~ In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

~~(4)(d)~~ The Commission may assess the penalties provided for in this ~~subsection-section~~. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Commission may specify, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Commission, in the superior court of the county in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment.

~~(5)(e)~~ A civil penalty of not more than ten thousand dollars (\$10,000) per month may be assessed by the Commission against any local government which fails to adopt or enforce a water supply watershed protection program as required by G.S. 143-214.5. No such penalty shall be imposed against a local government until the Commission has assumed the responsibility for administering and enforcing the local water supply watershed protection program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission. The schedule of civil penalties shall be based on acreage and other relevant cost factors and shall be designed to recoup the costs of administration and enforcement."

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

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

~~(b)~~ **Criminal Penalties.—**

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

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

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

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

- (1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.
- (2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.
- (3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.
- (4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.
- (5) Violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time, including but not limited to, guidelines for the pretreatment permit civil penalties. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.
- (6) Occasional, inadvertent, short-term violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

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

(f) Any person who ~~willfully~~ or negligently violates any classification, standard or limitation established pursuant to G.S. 143-214.1, 143-214.2, or 143-215; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.1 or of a special order or other appropriate document issued pursuant to G.S. 143-215.2; or any rule of the Commission implementing any of the said sections, shall be guilty of a

misdemeanor punishable by a fine not to exceed fifteen thousand dollars (\$15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars (\$200,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed six months, or by both.

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

(h) (1) Any person who knowingly violates any classification, standard, or limitation established in the rules of the Commission pursuant to G.S. 143-214.1, 143-214.2, 143-215, or any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.1 or of a special order or other appropriate document issued pursuant to G.S. 143-215.2 and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class H felony, punishable by a fine not to exceed two hundred fifty thousand dollars (\$250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars (\$1,000,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed 10 years, or by both.

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

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

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

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

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

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

~~(2)(i)~~ Any person who 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 Article or a rule implementing this ~~Article, Article~~; or who knowingly makes a false statement of a material fact in a rulemaking proceeding or contested case under this Article; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or ~~regulations-rules~~ of the Commission implementing this ~~Article, Article~~ shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars (\$10,000), or by imprisonment not to exceed six months, or by both.

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

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

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

~~(e) Injunctive Relief.~~ Whenever the Department has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part, any of the terms of any permit issued pursuant to this Part, or a rule implementing this Part, the Department may, either before or after the institution of any other action or proceeding authorized by this Part, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Part or the regulations of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation.

Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Part. For purposes of this ~~subsection~~section references to 'this Part' include G.S. 143-355(k) relating to water use information."

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

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

(a) ~~Civil Penalties.~~—

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

- a.(1) Violates any classification, standard or limitation established pursuant to G.S. 143-215.107;
- b.(2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 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. 143-215.110;
- d.(4) Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or Article 21 of this Chapter;
- f.(5) Violates a rule of the Commission or a local governing body implementing this Article.

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

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

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

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

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

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

(b) ~~Criminal Penalties.~~—

(4)(a) For purposes of this ~~subsection~~section, the term 'person' shall mean, in addition to the definition contained in G.S. 143-213, any responsible corporate or public

officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this ~~subsection~~ section shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

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

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

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

- (1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.
- (2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.
- (3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.
- (4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.
- (5) Violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time, including but not limited to, guidelines for the pretreatment permit civil penalties. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.
- (6) Occasional, inadvertent, short-term violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare. If the violation occurs within 30 days of a

prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

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

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

(g) Any person who knowingly and willfully violates any classification, standard, or limitation established in the rules of the Commission pursuant to G.S. 143-215.107 or any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or of a special order or other appropriate document issued pursuant to G.S. 143-215.110, shall be guilty of a Class J felony, punishable by a fine not to exceed one hundred thousand dollars (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed three years, or by both. For the purposes of this subsection, the phrase 'knowingly and willfully' shall mean intentionally and consciously as the courts of this State, according to the principles of common law, interpret the phrase in the light of reason and experience.

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

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

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

- b. An existing circumstance, if he is aware or believes that the circumstance exists; or
 - c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.
- (3) Under this subsection, in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:
- a. The person is responsible only for actual awareness or actual belief that he possessed; and
 - b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.
- (4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

~~(2)(i)~~ Any person who 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 Article and Article 21, or a rule implementing this Article and Article 21, ~~21~~; or who knowingly makes a false statement of a material fact in a rulemaking or contested case under this Article or Article 21; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article and Article 21 ~~or regulations or rules~~ of the Commission implementing this Article and Article 21, shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars (\$10,000), or by imprisonment not to exceed six months, or by both.

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

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

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

(e) ~~Injunctive Relief.~~—Whenever the Department has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Article or Article 21 of this Chapter or a rule implementing this Article or Article 21 of

this Chapter, the Department, either before or after the institution of any other action or proceeding authorized by this Article or Article 21 of this Chapter, may request the Attorney General to institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the violation occurred or may occur. Upon a determination by the court that the alleged violation of the provisions of this Article or Article 21 of this Chapter or the regulation of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Article or Article 21 of this Chapter."

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

"§ 143.215.88A. Enforcement procedures: civil penalties.

(a) ~~Civil Penalties.~~—Any person who intentionally or negligently discharges oil or other hazardous substances, or knowingly causes or permits the discharge of oil in violation of this Part or fails to report a discharge as required by G.S. 143-215.85 or who fails to comply with the requirements of G.S. 143-215.84(a) or orders issued by the Commission as a result of violations thereof, shall incur, in addition to any other penalty provided by law, a penalty in an amount not to exceed five thousand dollars (\$5,000) for every such violation, the amount to be determined by the Commission after taking into consideration the gravity of the violation, the previous record of the violator in complying or failing to comply with the provisions of this Part as well as G.S. 143-215.1, the amount expended by the violator in complying with the provisions of G.S. 143-215.84, the estimated damages attributed to the violator under G.S. 143-215.90, and such other considerations as the Commission deems appropriate. Every act or omission which causes, aids or abets a violation of this ~~section~~ subsection shall be considered a violation under the provisions of this ~~section~~ subsection and subject to the penalty herein provided. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Commission describing the violation with reasonable particularity and advising such person that the penalty is due. A person may contest a penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after receiving notice of the penalty. If a person fails to pay a penalty assessed against him, the Department shall refer the matter to the Attorney General for collection. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any person in any criminal case, except as prosecution for perjury or for giving a false statement.

~~(e)(b)~~ The civil ~~and criminal~~ penalties provided by this ~~section~~ (except the civil penalty for failure to report) ~~section~~, except the civil penalty for failure to report, shall not apply to the discharge of a pesticide regulated by the North Carolina Pesticide

Board, if such discharge would constitute a violation of the North Carolina Pesticide Law and if such discharge has not entered the surface waters of the State."

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

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

(b) Criminal Penalties.—

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

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

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

- (1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.
- (2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.
- (3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.
- (4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.
- (5) Violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time, including but not limited to, guidelines for the pretreatment permit civil penalties. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.

(d) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under State criminal offenses may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of

common law as they may be applied in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

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

- (f) (1) Any person who knowingly discharges or causes or permits the discharge of oil or other hazardous substances in violation of this Part, and who knows at that time that he places another person in imminent danger of death or serious bodily injury shall be guilty of a Class H felony punishable by imprisonment not to exceed 10 years or by fine not to exceed two hundred fifty thousand dollars (\$250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars (\$1,000,000) for each period of 30 days during which a violation continues, or by both, in the discretion of the court.
- (2) For the purposes of this subsection, a person's state of mind is knowing with respect to:
- a. His conduct, if he is aware of the nature of his conduct;
 - b. An existing circumstance, if he is aware or believes that the circumstance exists; or
 - c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.
- (3) Under this subsection, in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:
- a. The person is responsible only for actual awareness or actual belief that he possessed; and
 - b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.
- (4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person

endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

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

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

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

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

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

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

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

- (1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.
- (2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.
- (3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.
- (4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.

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

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

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

- (1) Transports or causes to be transported any hazardous waste identified or listed under G.S. 130A-294(c) to a facility which does not have a permit or interim status under G.S. 130A-294(c) or 42 U.S.C. § 6921, et seq.
- (2) Transports or causes to be transported such hazardous waste with the intent of delivery to a facility without a permit.
- (3) Treats, stores, or disposes of such hazardous waste without a permit or interim status under G.S. 130A-294(c) or 42 U.S.C. § 6921, et seq., or in knowing violation of any material condition or requirement or such permit or applicable interim status rules.

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

- (1) Transports or causes to be transported hazardous waste without a manifest as required under G.S. 130A-294(c).
- (2) Transports hazardous waste without a United States Environmental Protection Agency identification number as required by rules promulgated under G.S. 130A-294(c).
- (3) Omits material information or makes any false material statement or representation in any application, label, manifest, record, report,

permit, or other document filed, maintained, or used for purposes of compliance with rules promulgated under G.S. 130A-294(c).

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

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

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

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

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

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

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

- (4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted

by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

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

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

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

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

"§ 113-60.29. Penalties.

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned for a period of not more than 30 days, or both, in the discretion of the court. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by ~~G.S. 143-215.114 of Article 21B of Chapter 143 of the General Statutes.~~ G.S. 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under G.S. 113-60.28."

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

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

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

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

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

In the General Assembly read three times and ratified this the 27th day of July, 1990