

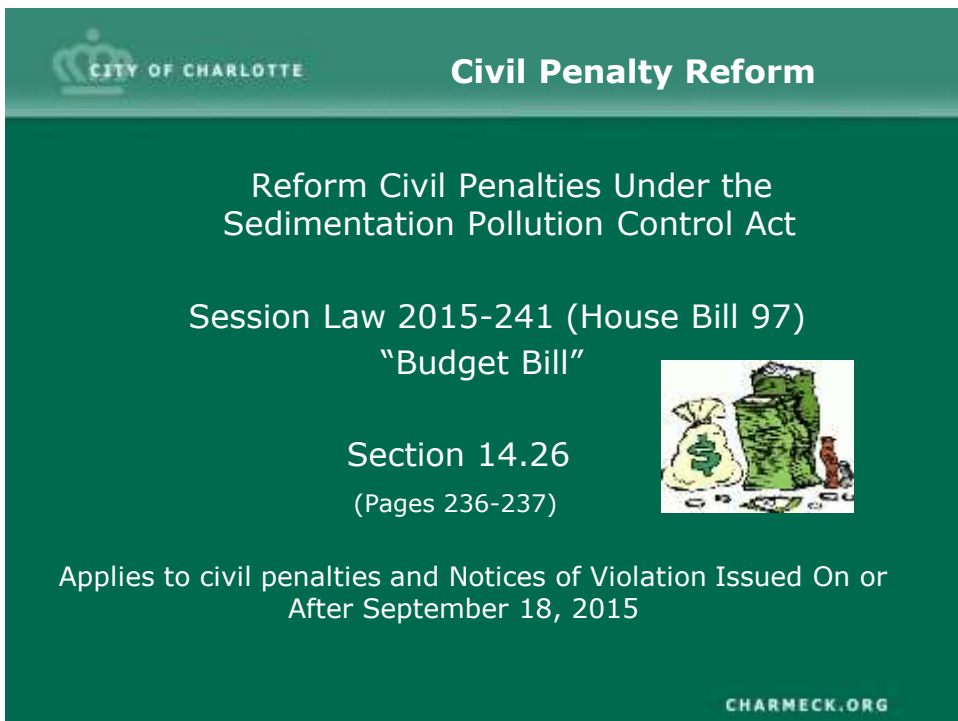


CHARLOTTE
ENVIRONMENT

2015-2016 NC Legislative Update

Erosion and Sedimentation Control Planning and
Design Workshop
April 28, 2016

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CITY OF CHARLOTTE

Civil Penalty Reform

Reform Civil Penalties Under the Sedimentation Pollution Control Act

Session Law 2015-241 (House Bill 97)
"Budget Bill"

Section 14.26
(Pages 236-237)



Applies to civil penalties and Notices of Violation Issued On or
After September 18, 2015

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Sedimentation Pollution Control Act

- Violations may be assessed up to \$5000 per day
- Each Day of a continuing violation is a separate violation



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New to the SPCA in 2015

First Time Recipients of Civil Penalty Assessments(CPA)

- If the person/entity has never been assessed a penalty under the SPCA
- AND
- That person abates continuing environmental damage resulting from the violation(s) within 180 days of the notice of violation (NOV):

The maximum cumulative total civil penalty for violations associated with the land disturbing activity for which an erosion and sedimentation control plan is required is \$25,000

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New to the SPCA in 2015

- If the person/entity receiving the CPA has previously received CPAs under the SPCA,

OR

- Does not abate continuing environmental damage within 180 day of the date of the NOV,

THERE IS NO MAXIMUM CAP ON THE CIVIL PENALTIES



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New to the SPCA in 2015

- If a person/entity has not received a previous NOV under the SPCA, then the State or the local delegated program must deliver the NOV in person

AND

- Shall offer assistance in developing corrective measures
 - Referral to a technical assistance program in DEQ
 - Referral to a cooperative extension program
 - Provision of written materials such as DEQ guidance documents

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New to the SPCA in 2015

If the regulatory authority is unable to deliver the NOV in person within 15 days following the discovery of the violation, then the NOV may be sent via certified mail, along with the required technical assistance.



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DEMLR Guidance

- Provide previous NOV information for DEQ database
- If no previous CPA, notify violator of the 180 day deadline (from date of NOV) to abate continuing environmental damage
- Cannot serve the Financially Responsible Party's representative, so if give them the NOV, must mail NOV to FRP 15 days after inspection date
- Document attempts to hand deliver

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Remission of Civil Penalties

A request for remission of civil penalties may be made to the Sedimentation Control Commission within 60 days of receipt of the civil penalty assessment.

- Waive right to appeal the penalty to OAH
- Stipulate to facts admitting violation on which assessment was based



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Remission of Civil Penalties

Factors to be considered:

- Whether the CPA factors were wrongly applied
- Whether continuing environmental damage *promptly* abated
- Whether the violation was inadvertent or accidental
- Whether violator received previous CPAs
- Whether payment of the CPA would cause significant financial hardship
- Assessed property tax valuation of the property where violation occurred

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Civil Penalty Remission

- Person requesting remission has burden of proving financial hardship
- The SCC may remit the entire penalty amount if:
 - No previous CPAs
 - AND
 - Payment of the civil penalty will prevent payment for necessary remedial actions
- SCC cannot increase penalty

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NC Farm Act
Session Law 2015-263
Senate Bill 513

Additional Exemptions to the SPCA

- Actions taken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts under Section 404 of the Clean Water Act
- Actions taken per Natural Conservation Service standards to restore the wetland functions of converted wetlands



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NC Farm Act
Session Law 2015-263
Senate Bill 513

- Mining Act amended to add new exemption – see Definition section:
 - Excavation or grading when conducted solely for activities undertaken on agricultural land that are exempt, per General Statute 113A-52.01(1), from the requirements of G.S. 113A
- Farm Act exempts contagious disease control activities from all permitting requirements (ex. Highly Pathogenic Avian Influenza)

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Regulatory Reform Act
Session Law 2015-286
House Bill 765

DEQ required to study the possible outcomes of exempting construction, maintenance, and removal of linear utility projects from certain environmental regulations. "Linear utility project" is defined as an electric power line, water line, sewage line, stormwater drainage line, telephone line, cable television line, data transmission line, communications related line or natural gas pipeline.

Report submitted recommends no exemption from the SPCA.

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Regulatory Reform Act
SL 2015-286
HB 765

Environmental Self Audit Privilege and Limited Immunity-
Section 4.1

- Established to encourage operators to conduct voluntary internal compliance audits and improve compliance while protecting the confidentiality of communications about such an audit
- Self audit report not admissible in CPA proceedings – privileged unless waived
- Can submit report and CPA may be waived but now a public record
- No preemption by local laws allowed
- EPA approval required for federal programs in NC

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NC Legislative Session
April 25, 2016

WHAT TO EXPECT:

- HB2 Repeal?
- Budget Surplus – what to do??
- Billboards – proposed legislation last year to limit local regulatory authority
- Aesthetics clarification? (2015 limited local authority for new development)
- Plastic Piping for water and sewer projects – dictating engineering decisions at local level?

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Questions



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