

Part 2. Remedies.

§ 130A-17. Right of entry.

(a) The Secretary and a local health director shall have the right of entry upon the premises of any place where entry is necessary to enforce the provisions of this Chapter or the rules adopted by the Commission or a local board of health. If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained pursuant to G.S. 15-27.2. However, if an imminent hazard exists, no warrant is required for entry upon the premises.

(b) The Secretary of Environmental Quality and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 10 of this Chapter. (1983, c. 891, s. 2; 1997-443, s. 11A.60; 2001-474, s. 19; 2006-255, s. 13.3; 2011-145, s. 13.3(rr); 2015-241, s. 14.30(v).)

§ 130A-18. Injunction.

(a) If a person shall violate any provision of this Chapter, the rules adopted by the Commission or rules adopted by a local board of health, or a condition or term of a permit or order issued under this Chapter, the Secretary or a local health director may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(b) The Secretary of Environmental Quality and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 10 of this Chapter. (1983, c. 891, s. 2; 1997-443, s. 11A.61; 2001-474, s. 20; 2006-255, s. 13.4; 2007-550, s. 2(a); 2011-145, s. 13.3(ss); 2015-241, s. 14.30(v).)

§ 130A-19. Abatement of public health nuisance.

(a) If the Secretary or a local health director determines that a public health nuisance exists, the Secretary or a local health director may issue an order of abatement directing the owner, lessee, operator or other person in control of the property to take any action necessary to abate the public health nuisance. If the person refuses to comply with the order, the Secretary or the local health director may institute an action in the superior court of the county where the public health nuisance exists to enforce the order. The action shall be calendared for trial within 60 days after service of the complaint upon the defendant. The court may order the owner to abate the nuisance or direct the Secretary or the local health director to abate the nuisance. If the Secretary or the local health director is ordered to abate the nuisance, the Department or the local health department shall have a lien on the property for the costs of the abatement of the nuisance in the nature of a mechanic's and materialmen's lien as provided in Chapter 44A of the General Statutes and the lien may be enforced as provided therein.

(b) The Secretary of Environmental Quality and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 10 of this Chapter. (1893, c. 214, s. 22; Rev., ss. 3446, 4450; 1911, c. 62, ss. 12, 13; 1913, c. 181, s. 3; C.S., ss. 7071, 7072; 1957, c. 1357, s. 1; 1983, c. 891, s. 2; 1997-443, s. 11A.62; 2006-255, s. 13.5; 2011-145, s. 13.3(tt); 2015-241, s. 14.30(v).)

§ 130A-20. Abatement of an imminent hazard.

(a) If the Secretary or a local health director determines that an imminent hazard exists, the Secretary or a local health director may order the owner, lessee, operator, or other person in control of the property to abate the imminent hazard or may, after notice to or reasonable attempt to notify the owner, lessee, operator, or other person in control of the property enter upon any property and take any action necessary to abate the imminent hazard. If the Secretary or a local health director abates the imminent hazard, the Department or the local health department shall have a lien on the property of the owner, lessee, operator, or other person in control of the property where the imminent hazard existed for the cost of the abatement of the imminent hazard. The lien may

be enforced in accordance with procedures provided in Chapter 44A of the General Statutes. The lien may be defeated by a showing that an imminent hazard did not exist at the time the Secretary or the local health director took the action. The owner, lessee, operator, or any other person against whose property the lien has been filed may defeat the lien by showing that that person was not culpable in the creation of the imminent hazard.

(b) The Secretary of Environmental Quality and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9 and 10 of this Chapter. (1893, c. 214, s. 22; Rev., ss. 3446, 4450; 1911, c. 62, ss. 12, 13; 1913, c. 181, s. 3; C.S., ss. 7071, 7072; 1957, c. 1357, s. 1; 1983, c. 891, s. 2; 1997-443, s. 11A.63; 2002-179, s. 6; 2006-255, s. 13.6; 2011-145, s. 13.3(uu); 2015-241, s. 14.30(v).)

§ 130A-20.01. Action for the recovery of costs of hazardous materials emergency medical response.

A person who causes the release of a hazardous material that results in the activation of one or more State Medical Assistance Teams (SMATs) or the Epidemiology Section of the Division of Public Health of the Department of Health and Human Services shall be liable for all reasonable costs incurred by each team or the Epidemiology Section that responds to or mitigates the incident. The Secretary of Health and Human Services shall invoice the person liable for the hazardous materials release and, in the event of nonpayment, may institute an action to recover those costs in the superior court of the county in which the release occurred. (2007-107, s. 3.1(b).)

§ 130A-21. Embargo.

(a) In addition to the authority of the Department of Agriculture and Consumer Services pursuant to G.S. 106-125, the Secretary or a local health director has authority to exercise embargo authority concerning food or drink pursuant to G.S. 106-125(a), (b) and (c) when the food or drink is in an establishment that is subject to regulation by the Department of Health and Human Services pursuant to this Chapter, that is subject to rules adopted by the Commission, or that is the subject of an investigation pursuant to G.S. 130A-144; however, no such action shall be taken in any establishment or part of an establishment that is under inspection or otherwise regulated by the Department of Agriculture and Consumer Services or the United States Department of Agriculture other than the part of the establishment that is subject to regulation by the Department of Health and Human Services pursuant to this Chapter. Any action under this section shall only be taken by, or after consultation with, Department of Health and Human Services regional environmental health specialists, or the Director of the Division of Public Health or the Director's designee, in programs regulating food and drink pursuant to this Chapter or in programs regulating food and drink that are subject to rules adopted by the Commission. Authority under this section shall not be delegated to individual environmental health specialists in local health departments otherwise authorized and carrying out laws and rules pursuant to G.S. 130A-4. When any action is taken pursuant to this section, the Department of Health and Human Services or the local health director shall immediately notify the Department of Agriculture and Consumer Services. For the purposes of this subsection, all duties and procedures in G.S. 106-125 shall be carried out by the Secretary of Health and Human Services or the local health director and shall not be required to be carried out by the Department of Agriculture and Consumer Services. It shall be unlawful for any person to remove or dispose of the food or drink by sale or otherwise without the permission of a Department of Health and Human Services regional environmental health specialist, the Director of the Division of Public Health or the Director's designee, the local health director, or a duly authorized agent of the Department of Agriculture and Consumer Services, or by the court in accordance with the provisions of G.S. 106-125.

(b) Recodified as G.S. 106-266.36 by Session Laws 2011-145, s. 13.3(s), effective July 1, 2011.

(c) Recodified as G.S. 113-221.4 by Session Laws 2011-145, s. 13.3(ttt), effective July 1, 2011.

(d) Nothing in this section is intended to limit the embargo authority of the Department of Agriculture and Consumer Services. The Department of Health and Human Services and the Department of Agriculture and Consumer Services are authorized to enter agreements respecting the duties and responsibilities of each agency

in the exercise of their embargo authority.

(e) For the purpose of this section, a food or drink is adulterated if the food or drink is deemed adulterated under G.S. 106-129; and food or drink is misbranded if it is deemed misbranded under G.S. 106-130. (1983, c. 891, s. 2; 1997-261, s. 109; 1997-443, s. 11A.63A; 2006-80, s. 1; 2007-7, s. 1; 2011-145, ss. 13.3(s), (vv), (ww), (ttt).)

§ 130A-22. Administrative penalties.

(a) The Secretary of Environmental Quality may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Environmental Management Commission pursuant to Article 9, or any term or condition of a permit or order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifteen thousand dollars (\$15,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed thirty-two thousand five hundred dollars (\$32,500) per day in the case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars (\$50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed thirty-two thousand five hundred dollars (\$32,500) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). For violations of Part 7 of Article 9 of this Chapter and G.S. 130A-309.10(m): (i) a warning shall be issued for a first violation; (ii) the penalty shall not exceed two hundred dollars (\$200.00) for a second violation; and (iii) the penalty shall not exceed five hundred dollars (\$500.00) for subsequent violations. If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environmental Quality shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(a1) Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to the determination of civil liability or penalty pursuant to subsection (a) of this section.

(b) The Secretary of Environmental Quality may impose an administrative penalty on a person who violates G.S. 130A-325. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed twenty-five thousand dollars (\$25,000) for each day the violation continues.

(b1) The Secretary may impose an administrative penalty on a person who violates Article 19 of this Chapter or a rule adopted pursuant to that Article. Except as provided in subsection (b2) of this section, the penalty shall not exceed one thousand dollars (\$1,000) per day per violation. Until the Department has notified the person of the violation, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation.

In determining the amount of a penalty under this subsection or subsection (b2) of this section, the Secretary shall consider all of the following factors:

- (1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
- (2) The duration and gravity of the violation.
- (3) The effect on air quality.
- (4) The cost of rectifying the damage.
- (5) The amount of money the violator saved by noncompliance.
- (6) The prior record of the violator in complying or failing to comply with Article 19 of this Chapter or a rule adopted pursuant to that Article.

- (7) The cost to the State of the enforcement procedures.
- (8) If applicable, the size of the renovation and demolition involved in the violation.

(b2) The penalty for violations of the asbestos NESHAP for demolition and renovation, as defined in G.S. 130A-444, shall not exceed ten thousand dollars (\$10,000) per day per violation. Until the Department has provided the person with written notification of the violation of the asbestos NESHAP for demolition and renovation that describes the violation, recommends a general course of action, and establishes a time frame in which to correct the violations, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation. A violation of the asbestos NESHAP for demolition and renovation is not considered to continue during the period a person who has received the notice of violation is following the general course of action and complying with the time frame set forth in the notice of violation.

(b3) The Secretary may impose an administrative penalty on a person who violates Article 19A or 19B of this Chapter or any rules adopted pursuant to Article 19A or 19B of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed five thousand dollars (\$5,000) for each day the violation continues for Article 19A of this Chapter. The penalty shall not exceed five thousand dollars (\$5,000) for each day the violation continues for Article 19B of this Chapter. The penalty authorized by this section does not apply to a person who is not required to be certified under Article 19A or 19B.

(c) The Secretary may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars (\$50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars (\$300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling.

(c1) The Secretary may impose a monetary penalty on a vendor who violates rules adopted by the Commission pursuant to Article 13 of this Chapter when the Secretary determines that disqualification would result in hardship to participants in the Women, Infants, and Children (WIC) program. The penalty shall be calculated using the following formula: multiply five percent (5%) times the average dollar amount of the vendor's monthly redemptions of WIC food instruments for the 12-month period immediately preceding disqualification, then multiply that product by the number of months of the disqualification period determined by the Secretary.

(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary and the Secretary of Environmental Quality shall consider all of the following factors:

- (1) Type of violation.
- (2) Type of waste involved.
- (3) Duration of the violation.
- (4) Cause (whether resulting from a negligent, reckless, or intentional act or omission).
- (5) Potential effect on public health and the environment.
- (6) Effectiveness of responsive measures taken by the violator.
- (7) Damage to private property.
- (8) The degree and extent of harm caused by the violation.
- (9) Cost of rectifying any damage.
- (10) The amount of money the violator saved by noncompliance.
- (11) The violator's previous record in complying or not complying with the provisions of Article 9 of this Chapter, Article 11 of this Chapter, or G.S. 130A-325, and any regulations adopted thereunder, as applicable to the violation in question.

(e) A person contesting a penalty shall, by filing a petition pursuant to G.S. 150B-23(a) not later than 30 days after receipt by the petitioner of the document which constitutes agency action, be entitled to an administrative hearing and judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(f) The Commission shall adopt rules concerning the imposition of administrative penalties pursuant to this section that are under authority of the Secretary, and the Environmental Management Commission shall adopt rules concerning the imposition of administrative penalties pursuant to this section that are under authority of the Secretary of Environmental Quality.

(g) The Secretary or the Secretary of Environmental Quality may bring a civil action in the superior court of the county where the violation occurred or where the defendant resides to recover the amount of an administrative penalty authorized under this section whenever a person:

- (1) Who has not requested an administrative hearing in accordance with subsection (e) of this section fails to pay the penalty within 60 days after being notified of the penalty; or
- (2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the final agency decision.

(h) A local health director may impose an administrative penalty on any person who willfully violates the wastewater collection, treatment, and disposal rules of the local board of health adopted pursuant to G.S. 130A-335(c) or who willfully violates a condition imposed upon a permit issued under the approved local rules. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. The local health director shall establish and recover the amount of the administrative penalty in accordance with subsections (d) and (g). Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars (\$50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling.

The penalty shall not exceed three hundred dollars (\$300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling. A person contesting a penalty imposed under this subsection shall be entitled to an administrative hearing and judicial review in accordance with G.S. 130A-24. A local board of health shall adopt rules concerning the imposition of administrative penalties under this subsection.

(h1) A local health director may take the following actions and may impose the following administrative penalty on a person who manages, operates, or controls a public place or place of employment and fails to comply with the provisions of Part 1C of Article 23 of this Chapter or with rules adopted thereunder or with local ordinances, rules, laws, or policies adopted pursuant to Part 2 of Article 23 of this Chapter:

- (1) First violation. - Provide the person in violation with written notice of the person's first violation and notification of action to be taken in the event of subsequent violations.
- (2) Second violation. - Provide the person in violation with written notice of the person's second violation and notification of administrative penalties to be imposed for subsequent violations.
- (3) Subsequent violations. - Impose on the person in violation an administrative penalty of not more than two hundred dollars (\$200.00) for the third and subsequent violations.

Each day on which a violation of this Article or rules adopted pursuant to this Article occurs may be considered a separate and distinct violation. Notwithstanding G.S. 130A-25, a violation of Article 23 of this Chapter shall not be punishable as a criminal violation.

(i) The clear proceeds of penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(j) The Secretary of Environmental Quality may also assess the reasonable costs of any investigation, inspection, or monitoring associated with the assessment of the civil penalty against any person who is assessed a civil penalty under this section. (1983, c. 891, s. 2; 1987, c. 269, s. 2; c. 656; c. 704, s. 1; c. 827, s. 247; 1989, c. 742, s. 4; 1991, c. 691, s. 1; c. 725, s. 8; 1991 (Reg. Sess., 1992), c. 944, s. 11; 1993 (Reg. Sess., 1994), c. 686, s.

1; 1995, c. 504, s. 8; 1997-443, s. 11A.64; 1997-523, s. 2; 1998-215, s. 54(a); 2001-474, s. 21; 2002-154, s. 1; 2007-550, ss. 3(a), 4(a); 2009-27, s. 2; 2009-163, s. 2; 2009-488, s. 2; 2010-180, s. 14(c); 2011-145, s. 13.3(xx); 2013-378, s. 7; 2013-413, s. 49; 2015-241, s. 14.30(v); 2017-209, s. 19(b); 2020-74, s. 12(b).)

§ 130A-23. Suspension and revocation of permits and program participation.

(a) The Secretary may suspend or revoke a permit issued under this Chapter upon a finding that a violation of the applicable provisions of this Chapter, the rules of the Commission or a condition imposed upon the permit has occurred. A permit may also be suspended or revoked upon a finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue the permit.

(b) The Secretary may suspend or revoke a person's participation in a program administered under this Chapter upon a finding that a violation of the applicable provisions of this Chapter or the rules of the Commission has occurred. Program participation may also be suspended or revoked upon a finding that participation was based upon incorrect or inadequate information that materially affected the decision to grant program participation.

(c) A person shall be given notice that there has been a tentative decision to suspend or revoke the permit or program participation and that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act, at which time the person may challenge the tentative decision.

(d) A permit shall be suspended or revoked immediately if a violation of the Chapter, the rules or a condition imposed upon the permit presents an imminent hazard. An operation permit issued pursuant to G.S. 130A-281 shall be immediately suspended for failure of a public swimming pool to maintain minimum water quality or safety standards or design and construction standards pertaining to the abatement of suction hazards which result in an unsafe condition. A permit issued pursuant to G.S. 130A-248 shall be revoked immediately for failure of an establishment to maintain a minimum grade of C. The Secretary of Environmental Quality shall immediately give notice of the suspension or revocation and the right of the permit holder or program participant to appeal the suspension or revocation under G.S. 150B-23.

(e) The Secretary of Environmental Quality shall have all of the applicable rights enumerated in this section to enforce the provisions of Articles 9 and 10 of this Chapter. (1983, c. 891, s. 2; 1987, c. 827, s. 1; c. 438, s. 3; 1993, c. 211, s. 2; 1993 (Reg. Sess., 1994), c. 732, s. 2; 1995, c. 123, s. 15; 1997-443, s. 11A.65; 2011-145, s. 13.3(yy); 2015-241, s. 14.30(v).)

§ 130A-24. Appeals procedure.

(a) Appeals concerning the enforcement of rules adopted by the Commission, concerning the suspension and revocation of permits and program participation by the Secretary and concerning the imposition of administrative penalties by the Secretary shall be governed by Chapter 150B of the General Statutes, the Administrative Procedure Act.

(a1) Any person appealing an action taken by the Department pursuant to this Chapter or rules of the Commission shall file a petition for a contested case with the Office of Administrative Hearings as provided in G.S. 150B-23(a). The petition shall be filed not later than 30 days after notice of the action which confers the right of appeal unless a federal statute or regulation provides for a different time limitation. The time limitation imposed under this subsection shall commence when notice of the agency decision is given to all persons aggrieved. Such notice shall be provided to all persons known to the agency by personal delivery or by the placing of notice in an official depository of the United States Postal Service addressed to the person at the latest address provided to the agency by the person.

(b) Appeals concerning the enforcement of rules adopted by the local board of health and concerning the imposition of administrative penalties by a local health director shall be conducted in accordance with this

subsection and subsections (c) and (d) of this section. The aggrieved person shall give written notice of appeal to the local health director within 30 days of the challenged action. The notice shall contain the name and address of the aggrieved person, a description of the challenged action and a statement of the reasons why the challenged action is incorrect. Upon filing of the notice, the local health director shall, within five working days, transmit to the local board of health the notice of appeal and the papers and materials upon which the challenged action was taken.

(c) The local board of health shall hold a hearing within 15 days of the receipt of the notice of appeal. The board shall give the person not less than 10 days' notice of the date, time and place of the hearing. On appeal, the board shall have authority to affirm, modify or reverse the challenged action. The local board of health shall issue a written decision based on the evidence presented at the hearing. The decision shall contain a concise statement of the reasons for the decision.

(d) A person who wishes to contest a decision of the local board of health under subsection (b) of this section shall have a right of appeal to the district court having jurisdiction within 30 days after the date of the decision by the board. The scope of review in district court shall be the same as in G.S. 150B-51.

(e) The appeals procedures enumerated in this section shall apply to appeals concerning the enforcement of rules, the imposition of administrative penalties, or any other action taken by the Department of Environmental Quality pursuant to Articles 8, 9, 10, 11, and 12 of this Chapter. (1983, c. 891, s. 2; 1987, c. 482; c. 827, s. 248; 1993, c. 211, s. 1; 1997-443, s. 11A.66; 1998-217, s. 33; 2015-241, s. 14.30(u).)