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[Senate, October 12, 1983—Substituted by amendment by the Senate (Amick) as a new text of Senate Bill, No. 2054].

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## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-three.

1 SECTION 1. Chapter 21A of the General Laws is hereby  
2 amended by inserting the following section: —

3 *Section 16.* As used in this section, the term “department”  
4 shall mean the department of environmental quality engi-  
5 neering; and the term “person” shall mean any agency or  
6 political subdivision of the federal government or the com-  
7 monwealth, any state, public or private corporation or author-  
8 ity, individual, trust, firm, joint stock company, partnership,  
9 association or other entity, and any officer, employee, or agent  
10 of such person, and any group of persons.

11 The department may assess a civil administrative penalty  
12 on a person who fails to comply with any provision of any  
13 regulation, order, license, or approval issued or adopted by the  
14 department, or of any law which the department has the au-  
15 thority or responsibility to enforce. Each day during which  
16 each such failure to comply occurs or continues shall constitute  
17 a separate offense and shall be subject to a separate civil  
18 administrative penalty.

19 Any person assessed a civil administrative penalty pursuant  
20 to this section may request an adjudicatory hearing before  
21 the department pursuant to chapter thirty A. Each assess-  
22 ment of a civil administrative penalty shall be in writing; shall  
23 be served on the person being assessed by service in hand or  
24 by certified mail, return receipt requested; and shall include: a  
25 short and plain statement of each act or omission for which  
26 a civil administrative penalty is being assessed; each law, reg-  
27 ulation, order, license, or approval which has not been com-  
28 plied with as a result of such act or omission; the money  
29 amount of the civil administrative penalty being assessed for  
30 each such act or omission; the manner of payment of the pen-  
31 alty or penalties; and a statement of the person’s right to re-

32 quest an adjudicatory hearing on said assessment, including  
33 the deadline for making the request and the form and content  
34 of the request.

35 Except as otherwise provided in this paragraph, the as-  
36 sessment of a civil administrative penalty shall become final  
37 when the deadline for requesting an adjudicatory hearing has  
38 passed without such a request having been received by the de-  
39 partment. If a person makes a timely request for an adjudica-  
40 tory hearing on the assessment of a civil administrative pen-  
41 alty, and if a civil administrative penalty is assessed at the  
42 conclusion of the department's adjudicatory hearing pro-  
43 cedures, said civil administrative penalty shall be final when  
44 the deadline for instituting proceedings for judicial review has  
45 passed without such proceedings having been instituted.

46 The exclusive remedy for any person aggrieved by the final  
47 assessment of a civil administrative penalty shall be judicial  
48 review pursuant to section fourteen of chapter thirty A. Any  
49 person who institutes proceedings for judicial review of the  
50 final assessment of a civil administrative penalty shall, within  
51 the deadline for instituting said proceedings, place the full  
52 amount of the final assessment in the custody of the state  
53 treasurer in an interest-bearing escrow account. The estab-  
54 lishment of said escrow account shall be a condition of the re-  
55 viewing court's jurisdiction, and shall be subject to extension  
56 or waiver by the court only upon a showing of inability to pay  
57 into said account. If, after judicial review, the court affirms  
58 the assessment of a civil administrative penalty, in whole or  
59 in part, the department shall be paid the amount thereof, to-  
60 gether with the accumulated interest thereon in the escrow  
61 account. If the court sets aside the assessment of a civil ad-  
62 ministrative penalty, in whole or in part, the person on whom  
63 the civil administrative penalty was assessed shall be paid the  
64 amount thereof, together with the accumulated interest there-  
65 on in the escrow account.

66 Each person who fails to pay a civil administrative penalty  
67 on time shall be liable to the commonwealth for up to three  
68 times the money amount of the civil administrative penalty  
69 plus interest, costs, and attorneys' fees, including all costs and  
70 attorneys' fees incurred directly or indirectly in the collection



71 of said civil administrative penalty.

72 In determining the money amount of each civil administra-  
73 tive penalty, the department shall include the following in its  
74 considerations: the actual and potential impact on public  
75 health, safety and welfare and the environment of the failure  
76 to comply; the actual and potential damages suffered, and ac-  
77 tual or potential costs incurred, by the commonwealth or by  
78 any other person as a result of the failure to comply; whether  
79 the person being assessed the civil administrative penalty did  
80 everything reasonable to prevent the failure to comply from  
81 occurring, to promptly come into compliance, and to remedy  
82 and mitigate whatever harm might have been done as a re-  
83 sult of the failure to comply; whether the person being as-  
84 sessed the civil administrative penalty has previously failed  
85 to comply with any regulation, order, license, or approval is-  
86 sued or adopted by the department, or any law which the de-  
87 partment has the authority or responsibility to enforce; mak-  
88 ing compliance less costly than noncompliance; deterring future  
89 noncompliance; the financial condition of the person being  
90 assessed the civil administrative penalty; and the public in-  
91 terest.

92 No civil administrative penalty assessed pursuant to this  
93 section shall be less than one hundred dollars. For each of the  
94 following failures to comply, the civil administrative penalty  
95 shall not exceed ten thousand dollars: each release, discharge,  
96 or disposal of material into the environment without the ap-  
97 proval of the department, or in a manner not approved by the  
98 department, whenever such release, discharge, or disposal re-  
99 quires the approval of the department; engaging in any busi-  
100 ness or activity without a license or other authorization from  
101 the department, whenever engaging in such business or activ-  
102 ity requires such license or authorization by the department;  
103 failure to promptly report to the department each unauthor-  
104 ized disposal of hazardous waste, as that term is defined in  
105 chapter twenty-one C; and failure to promptly report to the  
106 department each unauthorized release or discharge of haz-  
107 ardous materials into the environment, as those terms are de-  
108 fined in chapter twenty-one E. For any other failure to com-  
109 ply with any regulation, order, license, or approval issued or

110 adopted by the department, or any law which the department  
111 has authority or responsibility to enforce, the civil admin-  
112 istrative penalty for each failure to comply shall not exceed  
113 one thousand dollars.

1 SECTION 2. No civil administrative penalty shall be assessed  
2 by the department of environmental quality engineering here-  
3 inafter in sections two and three of this act called the de-  
4 partment, pursuant to section sixteen of chapter twenty-one  
5 A of the General Laws, inserted by section one of this act,  
6 until the commissioner of the department has promulgated,  
7 in compliance with chapter thirty A of the General Laws,  
8 regulations for assessing civil administrative penalties.

1 SECTION 3. Within nine months of the effective date of this  
2 act, the commissioner of the department shall promulgate, in  
3 compliance with chapter thirty A of the General Laws, regu-  
4 lations for assessing civil administrative penalties pursuant to  
5 section sixteen of chapter twenty-one A of the General Laws,  
6 inserted by section one of this act, for failure to comply with  
7 any provision of chapter twenty-one C of the General Laws,  
8 or any regulation, order, or license adopted or issued there-  
9 under.