

455B.191 Penalties — burden of proof.

1. As used in this section, “*hazardous substance*” means hazardous substance as defined in section 455B.381 or section 455B.411.

2. Any person who violates any provision of part 1 of division III of this chapter or any permit, rule, standard, or order issued under part 1 of division III of this chapter shall be subject to a civil penalty not to exceed five thousand dollars for each day of such violation.

3. a. Any person who negligently or knowingly does any of the following shall, upon conviction, be punished as provided in paragraph “b” or “c”:

(1) Violates section 455B.183 or section 455B.186 or any condition or limitation included in any permit issued under section 455B.183.

(2) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which the person knew or reasonably should have known could cause personal injury or property damage.

(3) Causes a treatment works to violate any water quality standard, effluent standard, pretreatment standard or condition of a permit issued to the treatment works pursuant to section 455B.183, unless the person is in compliance with all applicable federal and state requirements or permits.

b. (1) A person who commits a negligent violation under this subsection is guilty of a serious misdemeanor punishable by a fine of not more than twenty-five thousand dollars for each day of violation or by imprisonment for not more than one year, or both.

(2) If the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both.

c. (1) A person who commits a knowing violation under this subsection is guilty of an aggravated misdemeanor punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both.

(2) If the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than one hundred thousand dollars for each day of violation or by imprisonment for not more than five years, or both.

4. 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 part 1 of division III of this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under part 1 of division III of this chapter or by any permit, rule, regulation, or order issued under part 1 of division III of this chapter, shall upon conviction be punished by a fine of not more than ten thousand dollars or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment.

5. The attorney general shall, at the request of the director with approval of the commission, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of this chapter or to obtain compliance with the provisions of part 1 of division III of this chapter or any rules promulgated or any provision of any permit issued under part 1 of division III of this chapter. In any such action, any previous findings of fact of the director or the commission after notice and hearing shall be conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

6. In all proceedings with respect to any alleged violation of the provisions of this part 1 of division III or any rule established by the commission or the department, the burden of proof shall be upon the commission or the department except in an action for contempt as provided in section 455B.182.

7. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.178 shall be raised in the legal proceedings instituted in accordance with this section.

[C66, 71, §455B.23, 455B.25; C73, §455B.43, 455B.45, 455B.49; C75, §455B.43, 455B.49; C77, 79, 81, §455B.49]

C83, §455B.187

C85, §455B.191

86 Acts, ch 1245, §1899A; 88 Acts, ch 1080, §1, 2; 95 Acts, ch 195, §23; 98 Acts, ch 1209, §24; 2002 Acts, ch 1137, §26, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262; 2009 Acts, ch 133, §154; 2010 Acts, ch 1069, §56

Former sections in ch 455B, division III, applicable to animal feeding operations transferred to chapter 459, subchapter III, pursuant to legislative directive in 2002 Acts, ch 1137; see also §459.603

Subsection 3, paragraph a, subparagraphs (2) and (3) amended