

SUBCHAPTER 2J - CIVIL PENALTIES

15A NCAC 02J .0101 PURPOSE AND SCOPE

These regulations provide the procedures and standards governing the assessment, remission, mitigation and appeal of civil penalties by the Environmental Management Commission and its delegates.

History Note: Authority G.S. 143-215.3(a)(1);
Eff. February 1, 1976.

15A NCAC 02J .0102 DEFINITIONS

The terms used herein shall be as defined in G.S. 143-213, G.S. 143-215.77, and as follows:

- (1) "Commission" means the N.C. Environmental Management Commission;
- (2) "Delegate" means any person to whom the Commission has delegated authority to act in its stead in relation to civil penalties;
- (3) "Director" means the Director, Division of Environmental Management; except with regard to dam safety violations, it shall mean the Director, Division of Energy, Mineral, and Land Resources; and with regard to violations of 40 CFR 61.19, 61.145, 61.146, and 61.147 as adopted at 15A NCAC 2D .0525(a)(1), it shall mean the Director of the Division of Epidemiology; provided that the definitions of 40 CFR 61.02 and 61.141 shall apply to 40 CFR 61.19, 61.145, 61.146, and 61.147;
- (4) "Respondent" means the person against whom a penalty has been assessed;
- (5) "Waste", "Wastes" and "Other wastes" shall include, but shall not be limited to, medical wastes, refuse, litter, bottles, cans, paper, rubbish, garbage, debris and plastic materials; and
- (6) "Into waters of the state", "to the waters of the state", and "to the open waters of the Atlantic Ocean over which the state has jurisdiction" shall include the act of discharging or placing wastes into or onto waters adjacent to waters of the state in such proximity that the wastes are likely to, and subsequently do, enter the waters of the state.

History Note: Filed as a Temporary Amendment Eff. September 9, 1988 for a Period of 180 Days to Expire on March 8, 1989;
Statutory Authority G.S. 143-212(6); 143-213(18); 143-214.2; 143-215.3(a)(1);
Eff. February 1, 1976;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1(f)); January 1, 1991; March 1, 1989.

15A NCAC 02J .0103 WHO MAY ASSESS

Civil penalties may be assessed by the Commission or by the Director, except for dam safety violations, which civil penalties may be assessed by the Commission or by the Director, Division of Energy, Mineral, and Land Resources, and except for violations of asbestos demolition and renovation requirements of 40 CFR 61.145, 61.146, and 61.147, and the circumvention prohibition of 40 CFR 61.19 as it may relate thereto, as adopted in 15A NCAC 2D .0525(a)(1), which civil penalties may be assessed by the Commission or by the Director, Division of Epidemiology.

History Note: Authority G.S. 87-94; 143-215.3(a)(4); 143-215.6(A); 143-215.17(b);
143-215.36(b); 143-215.88A; 143-215.114(a);
Eff. February 1, 1976;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1(f)); January 1, 1991; November 1, 1978; September 10, 1976.

15A NCAC 02J .0104 WHEN ASSESSABLE

Civil penalties may be assessed against any person for:

- (1) water violations as prescribed in G.S. 143-215.6(a),
- (2) oil violations as prescribed in G.S. 143-215.91(a),
- (3) air violations as prescribed in G.S. 143-215.114(a),
- (4) water use violations as prescribed in G.S. 143-215.17(b),
- (5) dam safety violations as prescribed in G.S. 143-215.36(b);
- (6) well construction violations as prescribed in G.S. 87-94.

History Note: Authority G.S. 87-87; 87-94; 143-215.3(a); 143-215.6(a); 143-215.17(b); 143-215.36(b); 143-215.91(a); 143-215.114(a);
Eff. February 1, 1976;
Amended Eff. May 1, 1986.

15A NCAC 02J .0105 AMOUNT OF ASSESSMENT

History Note: Authority G.S. 87-87; 87-94; 143-215.3(a); 143-215.6(a); 143-215.17(b); 143-215.36(b); 143-215.91(a); 143-215.114(a);
Eff. February 1, 1976;
Amended Eff. May 1, 1986; June 1, 1981;
Repealed Eff. July 1, 1988.

15A NCAC 02J .0106 STANDARDS

In determining the amount of the assessment, the Commission and its delegates shall consider the following standards and shall cite those deemed applicable:

- (1) Gravity of the violation and the degree and extent of harm, including but not limited to the following:
 - (a) for a water violation:
 - (i) effluent standard(s) or water quality standard(s) violated,
 - (ii) type of other violation,
 - (iii) duration,
 - (iv) cause,
 - (v) effect on receiving waters, public health, and fish or wildlife,
 - (vi) effectiveness of preventive or responsive measures taken by violator;
 - (b) for an oil violation:
 - (i) type of oil,
 - (ii) amount and duration,
 - (iii) cause,
 - (iv) damage to public resources,
 - (v) damage to private property,
 - (vi) effectiveness of action taken by violator to clean up the oil and prevent further damages;
 - (c) for an air violation:
 - (i) emission control standard(s) or ambient air quality standard(s) violated;
 - (ii) type of other violation;
 - (iii) duration;
 - (iv) cause;
 - (v) effect on ambient air quality, public health, animal or plant life;
 - (vi) effectiveness of action taken by violator to cease the violation;
 - (d) for a water use violation:
 - (i) type of violation,
 - (ii) effect on ground water or surface water quantity or quality,
 - (iii) duration;
 - (e) for a dam safety violation:
 - (i) type of violation,
 - (ii) threat to life or property,
 - (iii) effect on stream classification or water quality standards;
 - (f) for a well construction violation:
 - (i) the amount of money the violator saved by his non-compliance,
 - (ii) whether or not the violation was committed willfully;
- (2) Cost of rectifying any damage;
- (3) The violator's previous record in complying or not complying with the laws and implementing regulations of the Commission;
- (4) The economic and financial condition of the respondent will be presumed to allow the assessment of the penalty. The respondent may raise this issue in an answer pursuant to Regulation .0008 of this Subchapter and will have the burden of coming forward and proving this position.

History Note: Authority G.S. 87-87; 87-94; 143-215.3(a)(1); 143-215.6(a);
143-215.17(b); 143-215.36(b); 143-215.91(a); 143-215.114(a);
Eff. February 1, 1976;
Amended Eff. May 1, 1986.

15A NCAC 02J .0107 PROPOSED ASSESSMENT: ASSESSMENT: MODIFICATION

(a) For minor violations of a continuing nature a letter of proposed assessment may be sent an alleged violator(s). The alleged violator(s) will be given up to 20 days from receipt of the letter to cease the violation or to submit reasons in writing why the penalty should not be assessed. If after 20 days the violation has not been ceased or no response has been received or if a response is not sufficient justification to preclude assessment, the penalty may be assessed from the date of receipt of notice under Paragraph (b) of this Regulation.

(b) For all violations for which a penalty is assessed a notice of such action shall be sent the respondent by registered mail or certified mail, except that in the case of well construction violations, other means calculated to provide actual notice may also be used. The notice will describe the violation with reasonable particularity, advise that the penalty is due, and advise the respondent of the rights of appeal as specified in Regulation .0008 of this Subchapter.

(c) The Director may modify a penalty to a lower amount upon finding that additional or different facts should be or should have been considered in determining the amount of assessment.

History Note: Authority G.S. 87-87; 87-94; 143-215.3(a)(1); 143-215.6(a);
143-215.17(b); 143-215.36(b); 143-215.91(a); 143-215.114(a);
Eff. February 1, 1976;
Amended Eff. May 1, 1986.

15A NCAC 02J .0108 PAYMENT: HEARING: REMISSION/MITIGATION

(a) Within 30 days after receipt of notification of an assessment, the assessed person must tender payment, or submit in writing a request for an administrative hearing specifying the factual or legal issues in dispute, or submit in writing a request for remission or reduction of the penalty or mitigation of the penalty stating the reasons why such request is justified.

(b) Payment may be tendered in conjunction with a hearing or remission request and in such case, the payment will be accepted as conditional upon final action.

(c) This Regulation does not preclude informal conferences concerning the penalty assessed.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.6(a); 143-215.91(a);
143-215.114(a);
Eff. February 1, 1976;
Amended Eff. May 31, 1979.

15A NCAC 02J .0109 TENDERS OF PAYMENT: REMISSION/MITIGATION: HEARING REQUEST

The Director will accept and acknowledge all tenders of payment on behalf of the Commission. Requests for remission or mitigation will be presented to the Commission and the respondent will be allowed the opportunity to present its request only when the respondent and director stipulate that no facts are in dispute, or where the respondent waives his right to an administrative hearing. If the respondent and director do not make such a stipulation and the respondent does not waive his right to a hearing, one will be held. In such case and where a hearing is requested, it shall be held in accordance with Section .0300, Subchapter 2I of this Chapter. Except, that in the case of request for a hearing where a civil penalty has been assessed for a dam safety violation pursuant to G.S. 143-215.36(b), the hearing shall be held in accordance with Section .0400, Subchapter 2K of this Chapter.

History Note: Authority G.S. 143-215.3(a)(1),(3);
Eff. February 1, 1976;
Amended Eff. June 15, 1980; May 31, 1979.

15A NCAC 02J .0110 REFERRAL

If any civil penalty as finally assessed is not paid, the Director on behalf of the Commission shall request the Attorney General to commence an action to recover the amount of the assessment.

History Note: Authority G.S. 143-215.3(a)(1),(3); 143-215.6(a); 143-215.17(b);
143-215.36(b); 143-215.91(a); 143-215.114(a);
Eff. February 1, 1976.

15A NCAC 02J .0111 REPORTS TO THE COMMISSION

Action taken by the Director will be reported to the Commission at the next meeting. Such reports will include information on the following:

- (1) person(s) issued letter(s) of proposed assessment;
- (2) person(s) assessed a civil penalty;
- (3) person(s) who have paid a penalty as assessed, requested remission, or requested an administrative hearing;
- (4) person(s) who have failed to pay; and
- (5) cases referred to the Attorney General for collection.

History Note: Authority G.S. 143-215.3(a)(1);
Eff. February 1, 1976.