



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

CRC-18-23

August 30, 2018

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Fiscal Analysis 15A 7J .0409 – Civil Penalties

At the July 2017 CRC meeting, the Commission approved for public hearing minor amendments to 7J .0409, Civil Penalties in order to be consistent with time frame changes in §143B 279.16 resulting from SL 2011-145, and existing time frames required by the Commission regarding the issuance of a Notice of Violation and a Notice of Assessment. Other amendments include the manner in which NOV's are delivered, clarifying situations when restoration will be required, and deletion of a reference to a repealed Area of Environmental Concern.

The intent of NCGS §143B 279.16 is to provide extra time for a violator and the state to work together to resolve the violation, while the Commission's current rule mandates a quick turn-around period between restoration and the NOA. The 2011 legislation and CRC rule create a narrow timeline to assemble the necessary paperwork, which can be problematic for the Division. The amendments will increase the time period before an NOA is sent from 30 to 90 days, add language to distinguish cases where restoration is required from those where it is not required, and change "shall" to "may" to be consistent with the discretionary term "may" in NCGS § 113A-126.

Under Civil Penalty Assessment 07J .0409(f)(3), the notice of civil a penalty assessment "... shall be delivered personally or by registered mail, return receipt requested." The amendment will include only the two methods allowed for delivering Notices of Assessment under NCGS §113A-126, which are registered or certified mail, return receipt requested.

You will recall that in addition to the proposed rule language, the NC Administrative Procedures Act (APA) requires a fiscal impact analysis to accompany the rule change and also to be approved by the Commission. Staff has prepared the attached fiscal analysis for the proposed amendments in compliance with NC APA.



Summary of Fiscal Analysis

Since the proposed changes are administrative in nature, DCM does not believe that any regulated party will incur additional costs as a result of this action. The amendments do not require any affected party to take any specific action, and do not affect permitting costs nor create any additional regulatory burdens.

These amendments will have no impact on local governments. DCM does not expect any change in permits issued or the cost to secure permits.

Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments will not affect environmental permitting for the NC Department of Transportation (NCDOT).

The proposed rule changes do not change the types of activities that are subject to CAMA permitting, nor will they affect the number of permit applications submitted for development. There will be no impact on DCM permit receipts, and DCM does not anticipate any fiscal impacts.

DCM anticipates the effective date of these rule amendments to be March 1, 2019.

The fiscal analysis has been approved by DEQ and by OSBM. Staff recommends Commission approval of the fiscal analysis.



Fiscal Analysis

Civil Penalties

15A NCAC 07J .0409

Prepared by

Mike Lopazanski
Policy & Planning Section
NC Division of Coastal Management
(252) 808-2808, ext. 223

July 20, 2018

Summary

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission (CRC)
Title of the Proposed Rule	Civil Penalties
Citation	15A NCAC 07J .0409
Description of the Proposed Rule	7J .0409 provides the procedures and standards governing the assessment, remission, settlement and appeal of civil penalties assessed by the Coastal Resources Commission and the Director pursuant to G.S. 113A-126(d).
Agency Contact	Mike Lopazanski Policy & Planning Section Chief Mike.Lopazanski@ncdenr.gov (252) 808-2808
Authority	G.S. 113A-124; G.S. 113A-126(d)
Necessity	The Coastal Resources Commission proposes to amend its administrative rules in order to comply with legislative changes to §143B 279.16 (Effective July 1, 2011), which mandates ten (10) days be added between the time the violator is sent a Notice of Violation (NOV) of an environmental statute or an environmental rule and the subsequent date the violator is sent a Notice of Assessment (NOA) for the civil penalty. The Commission is also proposing amendments to address procedural matters, clarifications and inconsistencies with other commission development rules for the coastal area.
Impact Summary	State government: No Local government: No Substantial impact: No Federal government: No Private citizens: No

Introduction and Purpose

The North Carolina Coastal Management Program administered by the Division of Coastal Management is a comprehensive regulatory program intended to guide development in the coastal area while protecting coastal resources, public trust and private property rights. As part of this comprehensive program, the Coastal Area Management Act (CAMA) allows for procedures and standards governing the assessment, remission, settlement and appeal of civil penalties assessed by the Coastal Resources Commission (CRC).

CAMA permits are not only a State permit, but also a federal (US Army Corps of Engineers) authorization as well. While the majority of development permits are issued to private property owners, permits are also issued to public entities, local governments, and non-profit organizations. If development is undertaken in an Area of Environmental Concern (AEC) under the CRC's jurisdiction without a CAMA permit or there is non-compliance with the terms and conditions of permitted development; this would also constitute a CAMA violation. The Division is provided enforcement authority through the CRC's rules as well as the Coastal Area Management Act §113A-126(d).

In 2011, the Regulatory Reform Act mandated that all regulatory divisions within the Department implement a tiered enforcement policy. Under this policy, Tier I violations receive warning letters and no civil penalties are assessed. A Tier II violation involve unauthorized work that has been completed, a Notice of Violation issuance and civil penalty assessment. These violations involve activities that could have been permitted if a permit had been sought by the applicant. Tier III is based on the seriousness of the violation, the degree of damage, or the length of time and include Continuing Notices of Violation, willful and intentional violations, dredge and fill violations, shellfish bed impacts, or unauthorized activities in Primary Nursery Areas. The Division may issue a Cease and Desist Order and civil penalties can be assessed based on the degree of impact on the resources according to penalty matrix (Schedule A). From 2012-2015, DCM has an average of 50 enforcement actions per year.

Minor amendments are needed to 7J .0409, Civil Penalties in order to be consistent with time frame changes to §143B 279.16 resulting from SL 2011-145 and time existing frames required by the Commission regarding the issuance of a Notice of Violation and a Notice of Assessment. Other amendments include the manner in which NOV's are delivered, clarifying situations when restoration will be required, and deletion of a reference to a repealed Area of Environmental Concern.

Since the proposed changes are administrative in nature, DCM does not believe that any regulated party will incur additional costs as a result of this action. The amendments do not require any affected party to take any specific action, and does not affect permitting costs nor add any additional regulatory burden.

These amendments will have no impact on local governments. DCM does not expect any change in permits issued or the cost to secure permits.

Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments will not affect environmental permitting for the NC Department of Transportation (NCDOT).

The proposed rule changes do not change the types of activities that are subject to CAMA permitting, nor will they affect the number of permit applications submitted for development. There will be no impact on DCM permit receipts, and DCM does not anticipate any fiscal impacts.

DCM anticipates the effective date of these rule amendments to be March 1, 2019.

Description of the Proposed Rules

The CRC is proposing the following amendments, based upon prior legislative changes and internal review:

- **07J .0409(e)** states that **Notices of Violation** issued by the Division “...shall be delivered personally or by registered mail, return receipt requested.” The CRC is proposing to amend this language to include the only two methods allowed for delivering Notices of Violation under NCGS §113A- 126, which are registered or certified mail, return receipt requested.
- **07J .0409(f)(2)** states that “The Director shall issue a notice of assessment [NOA] within 30 days after the Division determines that restoration of the adversely impacted resources is complete.” This rule can conflict with NCGS §143B 279.16 (Effective July 1, 2011), which mandates ten days be added between the time the violator is sent a Notice of Violation (NOV) of an environmental statute or an environmental rule and the subsequent date the violator is sent a Notice of Assessment (NOA) for the civil penalty.

The intent of NCGS §143B 279.16 is to provide extra time for a violator and the state to work together to resolve the violation, while the Commission’s current rule mandates a quick turn-around period between restoration and the NOA. The 2011 legislation and CRC rule has created a narrow timeline to assemble the necessary paperwork, which can be problematic for the Division. The Commission’s current rule also does not specify what happens to violators who are not required to restore resources (for example, contractors who are not also the property owner). Finally, the Commission’s current rule uses the mandatory term “shall,” which is inconsistent with the discretionary term “may” in NCGS § 113A-126. The Commission is therefore proposing to increase the time period before an NOA is sent from 30 to 90 days, adding language to distinguish cases where restoration is required from those where it is not required, and changing “shall” to “may.”

- **07J .0409(f)(3)** under Civil Penalty Assessment: states that the notice [of civil penalty assessment] “... shall be delivered personally or by registered mail, return receipt requested.” The Commission is proposing to amend this language to include only the two methods allowed for delivering Notices of Assessment under NCGS §113A-126, which are registered or certified mail, return receipt requested.
- **07J .0409(g)(4)(B) Schedule A Major Development Violations**, note (4) lists the “High Hazard Flood Area.” The High Hazard Flood AEC was repealed by the Commission in September 2015.
- **07J .0409(g)(4)(B) Schedule B Minor Development Violations**, note (1) lists the “High Hazard Flood Area.” The High Hazard Flood AEC was repealed by the Commission in September 2015.

COSTS OR NEUTRAL IMPACTS

NC Department of Transportation

Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments will not affect environmental permitting for the NC Department of Transportation (NCDOT).

Local Government

These amendments will have no impact on local governments. DCM does not expect any change in permits issued or the cost to secure permits.

Division of Coastal Management

The proposed rule changes do not change the types of activities that are subject to CAMA permitting, nor will they affect the number of permit applications submitted for development. There will be no impact on DCM permit receipts, and DCM does not anticipate any fiscal impacts.

COST/BENEFIT SUMMARY

The benefit of the rule change will be the increased timeframe for the Division of Coastal Management to assemble the necessary paperwork and work toward resolution of violations

while meeting the mandates of both §143B 279.16 and the Commissions interest in efficiently addressing Notices of Violation and Notices of Assessment.

15A NCAC 07J .0409 CIVIL PENALTIES

- (a) Purpose and Scope. These Rules provide the procedures and standards governing the assessment, remission, settlement and appeal of civil penalties assessed by the Coastal Resources Commission and the Director pursuant to G.S. 113A-126(d).
- (b) Definitions. The terms used herein shall be as defined in G.S. 113A-103 and as follows:
- (1) "Act" means the Coastal Area Management Act of 1974, G.S. 113A-100 through 134, plus amendments.
 - (2) "Delegate" means the Director or other employees of the Division of Coastal Management, or local permit officers to whom the Commission has delegated authority to act in its stead pursuant to this Rule.
 - (3) "Director" means the Director, Division of Coastal Management.
 - (4) "Respondent" means the person to whom a notice of violation has been issued or against whom a penalty has been assessed.
 - (5) "Person" is defined in the Coastal Area Management Act, G.S. 113A-103(9).
- (c) Civil penalties may be assessed against any person who commits a violation as provided for in G.S. 113A-126(d)(1) and (2).
- (d) Investigative costs. Pursuant to G.S. 113A-126(d)(4a) the Commission or Director may also assess a respondent for the costs incurred by the Division for investigation, inspection, and monitoring associated with assessment the civil penalty. Investigative costs shall be in addition to any civil penalty assessed. For a minor development violation, investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars (\$1,000), whichever is less. For a major development violation, investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars (\$2,500), whichever is less. The Division shall determine the amount of investigative costs to assess based upon factors including the amount of staff time required for site visits, investigation, enforcement action, interagency coordination, and for monitoring restoration of the site.
- (e) Notice of Violation. The Commission hereby authorizes employees of the Division of Coastal Management to issue in the name of the Commission notices of violation to any person engaged in an activity which constitutes a violation for which a civil penalty may be assessed. Such notices shall set forth the nature of the alleged violation, shall order that the illegal activity be ceased and affected resources be restored in accordance with 15A NCAC 07J .0410. The notice shall specify the time by which the restoration shall be completed as ordered by the Division. The notice shall be delivered ~~personally or~~ by registered ~~or certified~~ mail, return receipt requested.
- (f) Civil Penalty Assessment.
- (1) The Commission hereby delegates to the Director the authority to assess civil penalties according to the procedures set forth in Paragraph (g) of this Rule.
 - (2) ~~If restoration of affected resources is not required, the~~ The Director ~~shall~~ ~~may~~ issue a notice of assessment within ~~30~~ 90 days ~~from the date of the Notice of Violation.~~ ~~If restoration of affected resources is required, the Director may issue a Notice of Assessment within 60 days~~ after the Division determines that restoration of the adversely impacted resources is ~~complete- complete or due date of restoration completion.~~
 - (3) The notice of assessment shall specify the reason for assessment, how the assessment was calculated, when and where payment shall be made, and shall inform the respondent of the right to appeal the assessment by filing a petition for a contested case hearing with the Office of Administrative Hearings pursuant to G.S. 150B-23. The notice shall be delivered ~~personally or~~ by registered ~~or certified~~ mail, return receipt requested.
- (g) Amount of Assessment.
- (1) Civil penalties shall not exceed the maximum amounts established by G.S. 113A-126(d).
 - (2) If any respondent willfully continues to violate by action or inaction any rule or order of the Commission after the date specified in a notice of violation, each day the violation continues or is repeated shall be considered a separate violation as provided in G.S. 113A-126(d)(2).
 - (3) In determining the amount of the penalty, the Commission or Director shall consider the factors contained in G.S. 113A-126(d)(4).
 - (4) Pursuant to Subparagraph (g)(3) of this Rule, penalties for major development violations, including violations of permit conditions, shall be assessed in accordance with the following criteria.
 - (A) Major development which could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee, plus investigative costs.
 - (B) Major development which could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee, plus a penalty pursuant to Schedule A of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern

(AEC) or coastal resource as listed within Schedule A of this Rule, the penalties for each affected AEC shall be combined. Any structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules.

SCHEDULE A
Major Development Violations

Size of Violation (sq. ft.)

Area of Environmental Concern Affected	≤ 100	101-500	501-1,000	1001-3000	3001-5000	5001-8000	8001-11,000	11,001-15,000	15,001-20,000	20,001-25,000	>25,000
Estuarine Waters or Public Trust Areas (1)	\$250	\$375	\$500	\$1,500	\$2,000	\$3,500	\$5,000	\$7,000	\$9,000	\$10,000	\$10,000
Primary Nursery Areas	\$100	\$225	\$350	\$850	\$1,350	\$2,850	\$4,350	\$3,000	\$1,000	n/a	n/a
Mudflats and Shell Bottom	\$100	\$225	\$350	\$850	\$1,350	\$2,850	\$4,350	\$3,000	\$1,000	n/a	n/a
Submerged Aquatic Vegetation	\$100	\$225	\$350	\$850	\$1,350	\$2,850	\$4,350	\$3,000	\$1,000	n/a	n/a
Coastal Wetlands	\$250	\$375	\$500	\$1,500	\$2,000	\$3,500	\$5,000	\$7,000	\$9,000	\$10,000	\$10,000
Coastal Shorelines	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000
Wetlands (2)	\$100	\$200	\$300	\$700	\$1,100	\$2,300	\$3,500	\$4,750	\$2,750	\$750	n/a
ORW- Adjacent Areas	\$100	\$200	\$300	\$700	\$1,100	\$2,300	\$3,500	\$4,750	\$2,750	\$750	n/a
Ocean Hazard System (3)(4)	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000
Primary or Frontal Dune	\$100	\$200	\$300	\$700	\$1,100	\$2,300	\$3,500	\$4,750	\$2,750	\$750	n/a
Public Water Supplies (5)	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000
Natural and Cultural Resource Areas (6)	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000

- (1) Includes the Atlantic Ocean from the normal high water mark to three miles offshore.
 - (2) Wetlands that are jurisdictional by the Federal Clean Water Act.
 - (3) If the AEC physically overlaps another AEC, use the greater penalty schedule.
 - (4) Includes the Ocean Erodible, **High Hazard Flood Area**, Inlet Hazard Area, and Unvegetated Beach Area.
 - (5) Includes Small Surface Water Supply, Watershed and Public Water Supply Well Fields.
 - (6) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.
- (C) Assessments for violations by public agencies (i.e. towns, counties and state agencies) shall be determined in accordance with Parts (g)(4)(A) and (B) of this Rule.
- (D) Willful and intentional violations. The penalty assessed under Parts (g)(4)(A) and (B) of this Rule shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Subparagraph shall not exceed ten thousand dollars (\$10,000) or be less than two thousand dollars (\$2,000) for each separate violation. A violation shall be considered to be willful and intentional when:
- (i) The person received written instructions from one of the Commission's delegates that a permit would be required for the development and subsequently undertook development without a permit; or
 - (ii) The person received written instructions from one of the Commission's delegates that the proposed development was not permissible under the Commission's rules,

- or received denial of a permit application for the proposed activity, and subsequently undertook the development without a permit; or
 - (iii) The person committed previous violations of the Commission's rules; or
 - (iv) The person refused or failed to restore a damaged area as ordered by one of the Commission's delegates. If necessary, the Commission or Division shall seek a court order to require restoration.
- (E) Assessments against contractors. Any contractor or subcontractor or person or group functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (g)(4)(D) and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.
- (F) Continuing violations.
 - (i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease or restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty.
 - (ii) Refusal or failure to restore a damaged area as ordered shall be considered a continuing violation and shall be assessed an additional penalty. When resources continue to be affected by the violation, the amount of the penalty shall be determined according to Part (g)(4)(B) of this Rule. The continuing penalty period shall be calculated from the date specified in the notice of violation for the unauthorized activity to cease or restoration to be completed and run until:
 - (I) the Division's order is satisfied, or
 - (II) the respondent enters into good faith negotiations with the Division, or
 - (III) the respondent contests the Division's order in a judicial proceeding by raising a justifiable issue of law or fact therein.

The continuing penalty period shall resume if the respondent terminates negotiations without reaching an agreement with the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the Division.
- (5) Pursuant to Subparagraph (g)(3) of this Rule, civil penalties for minor development violations, including violations of permit conditions, shall be assessed in accordance with the following criteria:
 - (A) Minor development which could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee, plus investigative costs.
 - (B) Minor development which could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee, plus a penalty pursuant to Schedule B of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern (AEC) or coastal resource as listed within Schedule B of this Rule, the penalties for each affected AEC shall be combined. Any structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules.

SCHEDULE B
Minor Development Violations

Size of Violation (sq. ft.)

Area of Environmental Concern Affected	≤ 100	101-500	501-1,000	1001-3000	3001-5000	5001-8000	8001-11,000	11,001 - 15,000	15,001 - 20,000	20,001 - 25,000	>25,000
Coastal Shorelines	\$225	\$250	\$275	\$325	\$375	\$450	\$525	\$625	\$750	\$875	\$1,000
ORW- Adjacent Areas	\$125	\$150	\$175	\$225	\$275	\$350	\$425	\$375	\$250	\$125	n/a
Ocean Hazard System (1)(2)	\$225	\$250	\$275	\$325	\$375	\$450	\$525	\$625	\$750	\$875	\$1,000
Primary or Frontal Dune	\$125	\$150	\$175	\$225	\$275	\$350	\$425	\$375	\$250	\$125	n/a
Public Water Supplies (3)	\$225	\$250	\$275	\$325	\$375	\$450	\$525	\$625	\$750	\$875	\$1,000
Natural and Cultural Resource Areas (4)	\$225	\$250	\$275	\$325	\$375	\$450	\$525	\$625	\$750	\$875	\$1,000

- (1) Includes the Ocean Erodible, ~~High Hazard Flood Area~~, Inlet Hazard Area, and Unvegetated Beach Area.
- (2) If the AEC physically overlaps another AEC, use the greater penalty schedule.
- (3) Includes Small Surface Water Supply, Watershed and Public Water Supply Well Fields.
- (4) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.
- (C) Violations by public agencies (e.g. towns, counties and state agencies) shall be handled by the local permit officer or one of the Commission's delegates within their respective jurisdictions except that in no case shall a local permit officer handle a violation committed by the local government they represent. Penalties shall be assessed in accordance with Parts (g)(5)(A) and (B) of this Rule.
- (D) Willful and intentional violations. The penalty assessed under Parts (g)(5)(A) and (B) of this Rule shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Subparagraph shall not exceed one thousand dollars (\$1,000.00) for each separate violation. A violation shall be considered to be willful and intentional when:
 - (i) The person received written instructions from the local permit officer or one of the Commission's delegates that a permit would be required for the development and subsequently undertook development without a permit; or
 - (ii) The person received written instructions from the local permit officer or one of the Commission's delegates that the proposed development was not permissible under the Commission's rules, or received denial of a permit application for the proposed activity, and subsequently undertook the development without a permit; or
 - (iii) The person committed previous violations of the Commission's rules; or
 - (iv) The person refused or failed to restore a damaged area as ordered by the local permit officer or one of the Commission's delegates. If necessary, a court order shall be sought to require restoration.
- (E) Assessments against contractors. Any contractor or subcontractor or person or group functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (g)(5)(D) and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.
- (F) Continuing violations.

- (i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty.
- (ii) Refusal or failure to restore a damaged area as ordered shall be considered a continuing violation and shall be assessed an additional penalty. The amount of the penalty shall be determined according to Part (g)(5)(B) of this Rule. The continuing penalty period shall be calculated from the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed and run until:
 - (I) the Commission delegate's order is satisfied, or
 - (II) the respondent enters into good faith negotiations with the local permit officer or the Division, or
 - (III) the respondent contests the local permit officer's or the Division's order in a judicial proceeding by raising a justiciable issue of law or fact therein.

The continuing penalty period shall resume if the respondent terminates negotiations without reaching an agreement with the local permit officer or the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the local permit officer or the Division.

(h) Hearings and Final Assessment. Final decisions in contested case hearings concerning assessments shall be made by the Commission. The final decision shall be based on evidence in the official record of the contested case hearing, the administrative law judge's recommended decision, any exceptions filed by the parties and oral arguments. Oral arguments shall be limited to the facts in the official record.

(i) 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.

(j) Reports to the Commission. Action taken by the Director shall be reported to the Commission at the next meeting. Such reports shall include information on the following:

- (1) respondent(s) against whom penalties have been assessed;
- (2) respondent(s) who have paid a penalty, requested remission, or requested an administrative hearing;
- (3) respondent(s) who have failed to pay; and
- (4) cases referred to the Attorney General for collection.

(k) Settlements. The Commission hereby delegates to the Director the authority to enter into a settlement of a civil penalty appeal at any time prior to decision in an administrative contested case hearing. Such settlements shall not require the approval of the Commission and shall not be considered a final Commission decision for purposes of G.S. 113A-123.

(l) Any settlement agreement proposed subsequent to a final Commission decision in the contested case shall be submitted to the Commission for approval.

*History Note: Authority G.S. 113A-124; 113A-126(d);
 Eff. January 24, 1980;
 ARRC Objection August 18, 1988;
 Amended Eff. January 1, 1989; November 1, 1986; November 1, 1984;
 ARRC Objection Lodged Eff. January 18, 1991;
 Amended Eff. February 1, 2008; July 1, 1991; June 1, 1991.*