



Sedimentation Pollution Control Program
2019 Local Programs Workshop
April 23 & 24, 2019

Division of Energy, Mineral and Land Resources

Julie Coco, PE, CPESC
State Sedimentation Program Engineer



Division of Energy, Mineral and Land Resources (DEMLR) Program Elements

- Sedimentation Program Overview
- Jurisdictions for Local Programs
- NOVs, Civil Penalties & Remission Requests
- Permitting Assistance through DEACS



The Sedimentation Pollution Control Program

To allow development within our State while preventing pollution by sedimentation

- Enforces Sedimentation Pollution Control Act of 1973
- Oversees 54 local sedimentation programs
- Educational Outreach
- Covers all land disturbing activities except agriculture and mining (conditional forestry exemption)
- 36,970 disturbed acres YTD statewide



~ 5,340 active LP projects
~ 19,380 permitted acres YTD



Local E&SC Program Project Exclusions

- Agriculture, mining, forestry activities
- Publicly-funded projects (public works)
- Activities conducted by or for the state or federal government (NCDOT, railroad, NRCS, etc.)
- Projects conducted by persons or companies with eminent domain (pipelines, etc.)



Civil Penalty Remission Requests

Budget Bill – SL 2015-241 (House Bill 97)



Civil Penalty Remission Requests



- New to E&SC program
- Must be made within 60 days of receipt of the CPA
- Must stipulate to the facts (admit violations) on which the assessment was based and waive the right to appeal to OAH or the local hearing board/commission.
- Remissions requests will be heard by the Sedimentation Control Commission for requests through a local program, and MAY be heard by the Commission for requests made through a DEQ regional office.



Civil Penalty Remission Requests

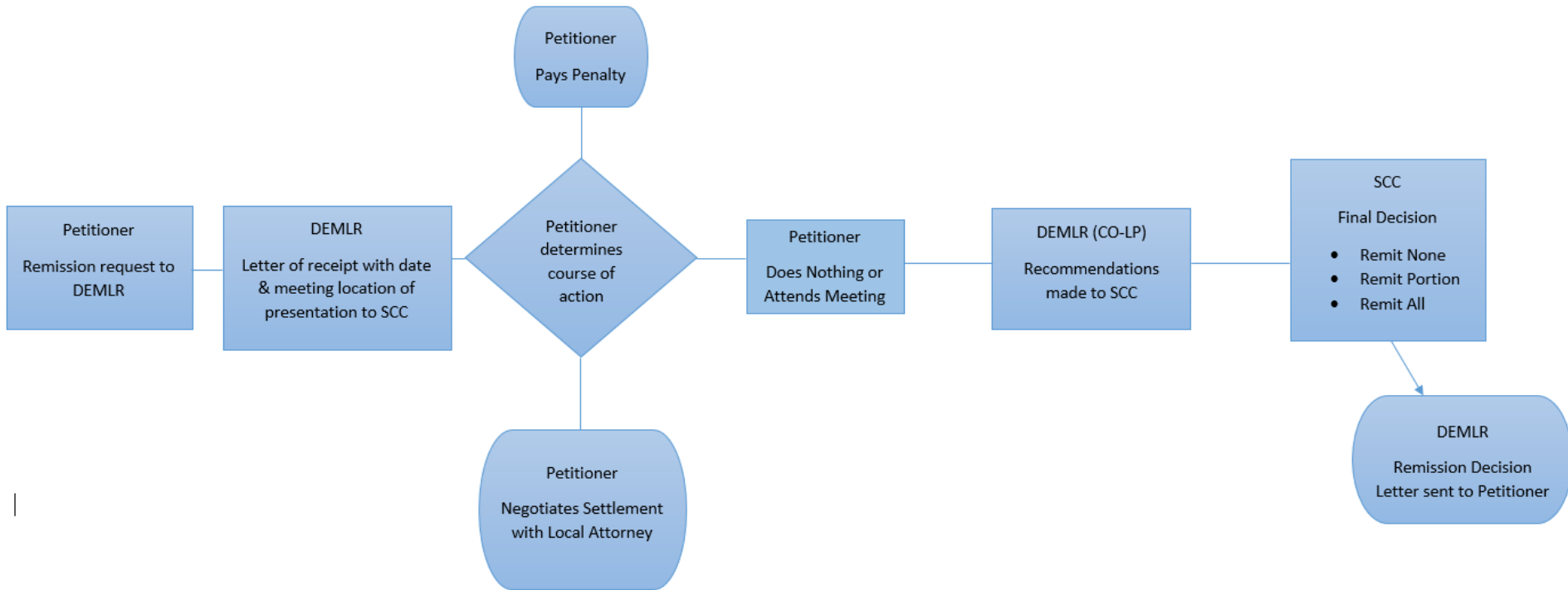
Factors/possible justifications which may be considered:

1. Whether the CPA factors were wrongly applied
2. Whether the violator promptly abated continuing environmental damage
3. Whether the violation was inadvertent or accidental
4. Whether the violator has received previous CPAs
5. Whether payment of the CPA would cause significant financial hardship
6. Assessed property tax valuation of the property on which the violation occurred

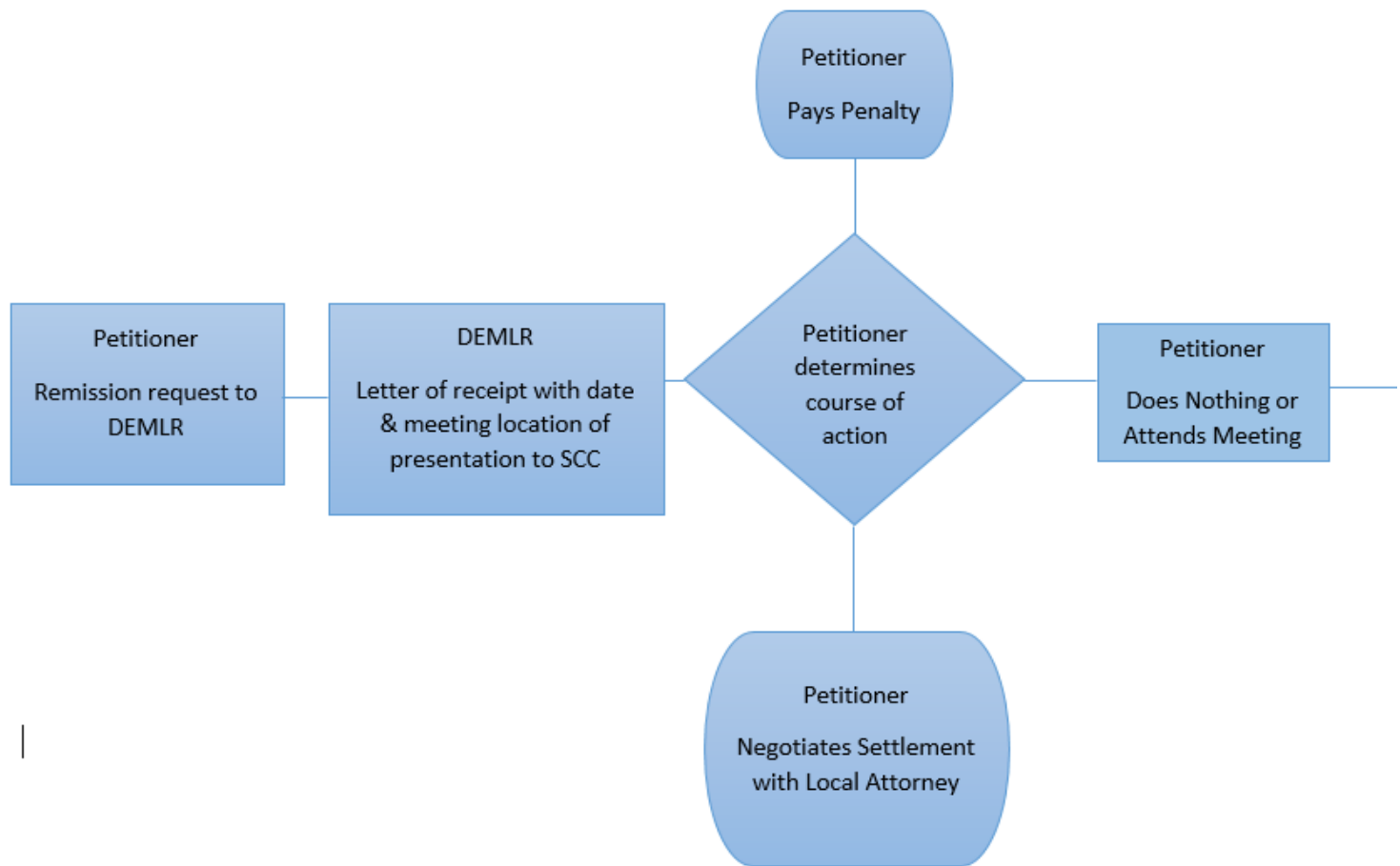
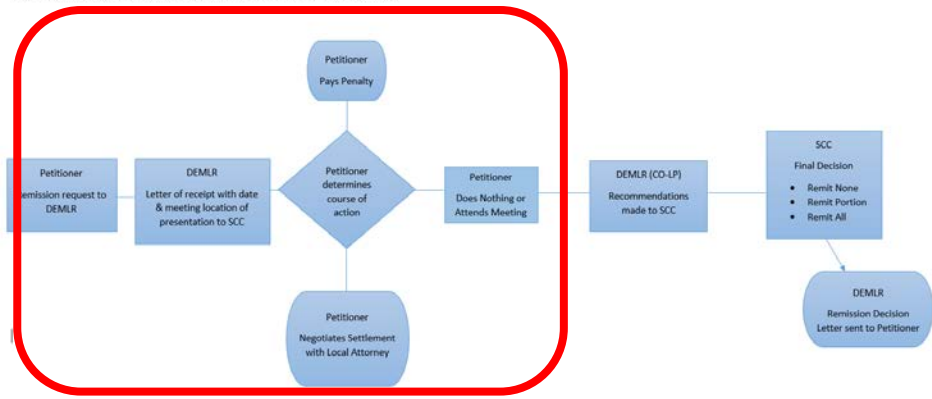


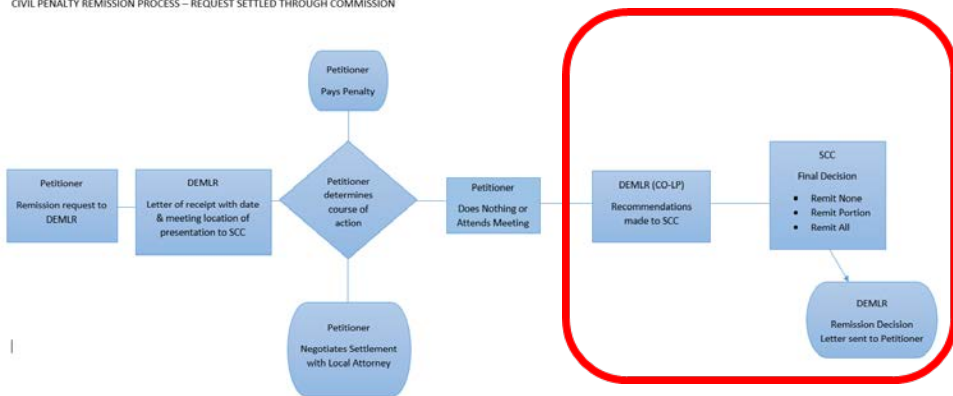
Civil Penalty Remission Requests

CIVIL PENALTY REMISSION PROCESS – REQUEST SETTLED THROUGH COMMISSION

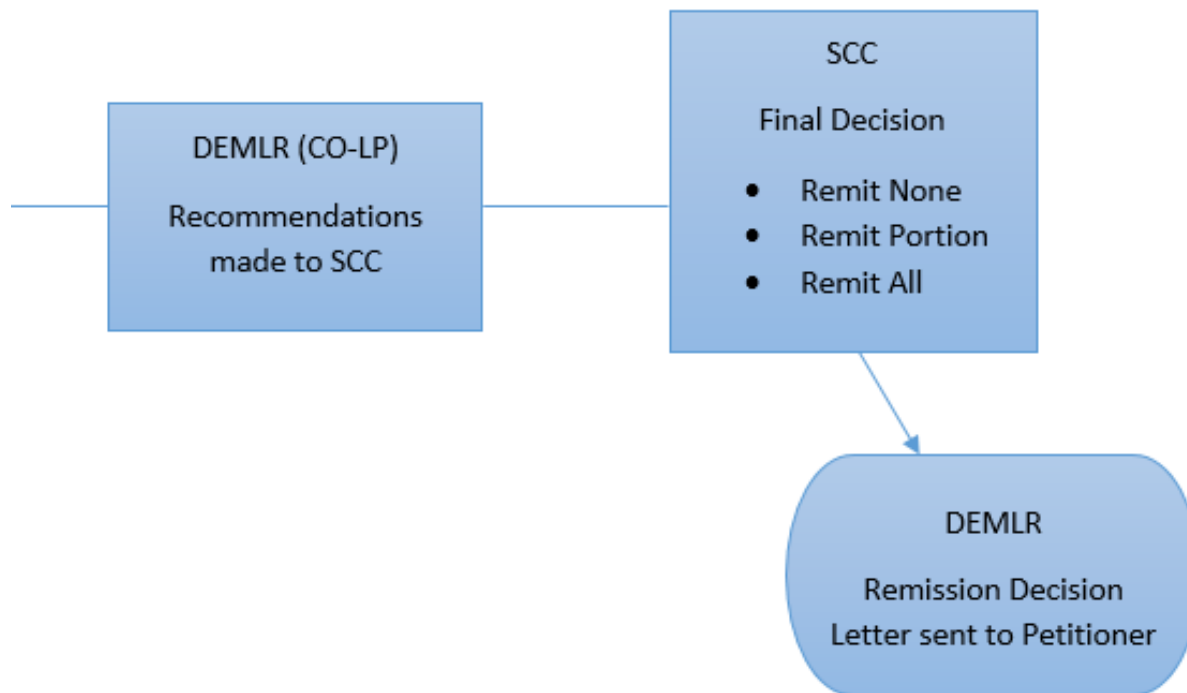


Flowchart applies to requests through the delegated local programs.





Flowchart applies to requests through the delegated local programs.



Civil Penalty Remission Requests

RECOMMENDATIONS REGARDING CIVIL PENALTY REMISSION REQUESTS

- Local Program recommends full remission of assessed penalty
- Local Program recommends partial remission of assessed penalty
- Local Program recommends no remission of assessed penalty

Comments:

Click or tap to insert printed name here.

Click or tap to enter a date.

X

[Sign or insert signature image here.]

Signature

Civil Penalty Remission Requests



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

WILLIAM E. VINSON, JR.
Interim Director

{DATE}

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

{FRP}
{Address1}
{Address1}
{City, State, Zip}

Re: Civil Penalty Assessment for Violations of the Sedimentation Pollution Control Act of 1973, N.C. General Statute 113A-50 et seq.
{COUNTY}
LQS {XX-XXXX}

Dear Sir or Madam:

Pursuant to North Carolina Administrative Code 15A 4A.0001 et seq. and the above-referenced Act, this letter is notice of a civil penalty assessed by the Department of Environmental Quality (DEQ), formerly Department of Environment and Natural Resources. The civil penalty assessment document is attached.

Within thirty (30) days from the date of receipt of this letter, you must do one of the following:

- (1) Pay the civil penalty assessment; or
- (2) File a written petition for a contested case hearing in the Office of Administrative Hearings (OAH).

Alternatively, if you choose to stipulate to the facts on which this assessment was based, but wish to request remission of the civil penalty, then within sixty (60) days from the date of receipt of this letter, you must do the following:

- (3) File a written request for a remission of the civil penalty.

Pursuant to N.C. General Statute 150B-22, informal settlement negotiations may be initiated at any time. To negotiate a settlement of this assessment, please contact John A. Payne, Assistant Attorney General, who may be reached by telephone at (919) 716-6600. Settlement offers do not extend the 30-day deadline for payment or filing of a contested case petition, nor the 60 days deadline for request for remission.

Additional information about your options is provided below.

Include title of FRP



Action req'd in 30 days



Remission



Civil Penalty Remission Requests

CERTIFIED MAIL

???Resp Person???

Page 2

???date???

PAYMENT

To pay the penalty, send your payment by check or money order made payable to the North Carolina Department of Environmental Quality (or **NCDEQ**) to John A. Payne, Assistant Attorney General, North Carolina Department of Justice, Environmental Division, 9001 Mail Service Center, Raleigh, North Carolina 27699-9001. The Attorney General's Office will represent **NCDEQ** in the resolution of this civil penalty assessment.

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. General Statutes 150B-23. File the original petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephoning (919) 431-3000.

You must serve **DEQ** by mailing a copy of the petition to:

Mr. Bill Lane
Registered Agent and General Counsel
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

REMISSION

A request for remission is limited to consideration of the six factors listed below and is not the proper procedure for contesting the accuracy of any of the statements contained in the assessment document.

Because a remission request forecloses the option of an administrative hearing, such a request will not proceed without a waiver of your right to an administrative hearing and a stipulation that there are no factual or legal issues in dispute.

You must execute and return to this office the attached "Waiver of Right to an Administrative Hearing and Stipulation of Facts" and the attached "Justification of Remission Request" which should provide additional information on the following factors which shall be considered in determining whether a civil penalty remission request will be approved:

- 1) One or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.

Instructions



Civil Penalty Remission Requests

Action req'd in
60 days



CERTIFIED MAIL

???Resp Person???

Page 3

???date???

- 2) The petitioner promptly abated continuing environmental damage resulting from the violation.
- 3) The violation was inadvertent or a result of an accident.
- 4) The petitioner had been assessed civil penalties for any previous violations.
- 5) Payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
- 6) The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.

You have the burden of providing information concerning the financial impact of a civil penalty and the burden of showing any financial hardship.

If you file a request for remission of the civil penalties, you must submit the required information within 60 days of receipt of this notice. Submit this information to the attention of:

*If sending by First Class Mail via
the US Postal Service:*

Julie Coco, PE, State Sediment Engineer
DEMLR
1612 Mail Service Center
Raleigh, NC 27699-1612

*If sending via delivery service
(e.g. UPS, FedEx):*

Julie Coco, PE, State Sediment Engineer
DEMLR
512 N. Salisbury Street
Raleigh, NC 27604

Payment of this penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in this penalty assessment are continuing in nature, **DEQ** reserves the right to assess additional civil penalties in the future, or take other enforcement action against you.

Please also be aware that because you have never previously been assessed a civil penalty for violations of the Sedimentation Pollution Control Act, should you abate continuing environmental damage resulting from these violations within 180 days of the date of the Notice of Violations (no later than {DATE}), then the maximum cumulative civil penalty assessed against you for these violations cannot exceed \$25,000.00.

Your attention to this matter is appreciated.

Sincerely,

{Name}
{Title}
DEMLR

cc: Julie Coco, State Sedimentation Engineer & John A. Payne, Assistant Attorney General

First Time Violators

First Time Recipients of Civil Penalty Assessments (CPAs)

A Reminder:

If a person has never been assessed a penalty under the SPCA

AND

That person abates continuing environmental damage resulting from the violation(s) within 180 days from the date of the Notice of Violation (NOV)

THEN

The maximum cumulative total civil penalty which may be assessed is **\$25,000**.

First Time Violators

First Time Recipients of Notices of Violations (NOVs)

A Reminder:

- If a person has not received a Notice of Violation under the SPCA, then we (state LQS or local delegated program) shall deliver the NOV in person and shall offer technical assistance in developing corrective measures.
- If the NOV cannot be delivered in person within 15 days following the inspection which noted the violations, then the NOV may be sent via certified mail.

Notices & Civil Penalties

- **§ 143B-279.16. Civil penalty assessments**

Civil penalties issued post-Notice(s) of Violation (NOV).

Ten (10) day waiting period for sending a civil penalty after sending an NOV.

- Notice of Violation is the official notice of a violation.

Accompanied by an inspection report. Photos encouraged.

- Important to track delivery. Need delivery dates for NOVs and especially for remission requests, which come directly to DEMLR!

Notices & Civil Penalties

What electronic delivery means are available today?

Notices & Civil Penalties

Proof of delivery in accordance with G.S. 1A-1(j)(6) - *Corporations*

- (a) In-person to an officer, director, or managing agent of the corporation
- (b) In-person to an agent authorized by law or appointment
- (c) By registered or certified mail, return receipt requested, and addressed to a person described in (a) or (b) above
- (d) By deposit with a *designated delivery service* authorized pursuant to 26 U.S.C. 7502(f)(2) and addressed to a person described in (a) or (b) above.



Notices & Civil Penalties

26 U.S.C. 7502(f)(2) – Timely mailing as timely filing/paying

(Private) Delivery services designated by the U.S. Secretary:

- United Parcel Service (UPS)
- FedEx
- DHL

A delivery receipt must be obtained. Includes an electronic or facsimile receipt.

(j6) Service by electronic mailing is not authorized. This means Outlook 'Read Receipts' are not allowable forms of delivery!



Notices & Civil Penalties

What happens if the receipt is returned as unsigned?

Look up
(Print or

If receipt

What ha

The fact

green card intact is proof that you tried to send it.

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|--|--|---|--|
| <ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. | | A. Signature <input checked="" type="checkbox"/> <i>[Signature]</i> | <input type="checkbox"/> Agent <input type="checkbox"/> Addressee |
| Shianne and Jason Minekime PO Box 56331 North Pole, AK 99705 | | B. Received by (Printed Name) <i>Jason Minekime</i> | C. Date of Delivery <i>9-28-15</i> |
| Barcode: 9590 9403 0670 5183 4816 22 2. Article Number (Transfer from service label) 7014 1200 0001 4320 5871 | | 3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Registered Mail Restricted Delivery (over \$500) | |
| | | <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery | |
| PS Form 3811, April 2015 PSN 7530-02-000-9053 | | Domestic Return Receipt | |

signed.

erable?

unsigned



Penalty Collection & Remittance

§ 113A-64. Penalties.

(a) Civil Penalties. -

(5) The clear proceeds of civil penalties collected by the Department or other State agency or a local government under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

This is a State fund used for dispersing funds to your public school system.



Penalty Collection & Remittance

Processing Penalty Payments

§ GS 115C-457.2 requires that civil penalties must be remitted to OSBM on a monthly basis (within 10 days of close of the calendar month). Agencies that collect civil penalties are allowed to retain costs associated with collections (not to exceed 20% of total collections). However, this collection cost recovery rate must be approved by OSBM prior to retaining any civil penalties. The Collection Cost memo and associated forms to request this approval can be found on OSBM's website located at:

<https://www.osbm.nc.gov/library/2017-18-budget-memos>



Penalty Collection & Remittance

NC Office of State Budget & Management

Mail checks addressed to “OSBM”
Attention: Business Office
2320 Mail Service Center
Raleigh, NC 27699-0320

Contact: Ms. Providence Hakizimana (CFO)
at 919-807-4748

Include “Civil Penalties” in the memo line!



NCDEQ - Division of Environmental Assistance and Customer Service (DEACS)

Primary responsibility is to assist businesses, industries, local governments, other institutions, consultants and residents as they seek to identify, understand and comply with the state's environmental requirements.

“One-Stop Permit Shop” for local governments



NCDEQ - Division of Environmental Assistance and Customer Service (DEACS)

Asheville Region – Alison Davidson

828 – 296 - 500 / alison.davidson@ncdenr.gov

Mooresville & Winston-Salem Regions – Marcia Allocco

704 – 663 - 699 / marcia.allocco@ncdenr.gov

Raleigh & Fayetteville Regions – David Lee

919 – 791 – 4200 / david.lee@ncdenr.gov

Washington Region – Lyn Hardison

252 – 946 – 6481 / lyn.hardison@ncdenr.gov

Wilmington Region – Cameron Weaver

910 – 796 – 7215 / cameron.weaver@ncdenr.gov

www.ncenvironmentalassistance.org

Toll Free: 1-877-623-6748





Questions?

