

NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION

**REMISSION GUIDELINES FOR LOCAL GOVERNMENT EROSION AND
SEDIMENTATION CONTROL PROGRAMS**

These guidelines are intended to assist Local Government Erosion and Sedimentation Control Programs in the processing and referring of civil penalty remission requests to the North Carolina Sedimentation Control Commission.

Step 1: Petitioner submits remission request to SCC via the local government that issued the CPA, within ~~sixty-three~~ (360) days of receipt of the Notice of Assessment, in accordance with N.C. Gen. Stat. § 113A-64.2(a).

Commented [ZS1]: Based on Session Law 2021-158.
Applies to penalties assessed on or after October 1, 2021

Step 2: The local government staff sends Petitioner a letter acknowledging receipt of the remission request, and includes the following:

1. A request for additional financial information, if Petitioner checked box (e) on the Justification for Remission Request Form;
2. Request for any other supporting documentation; and
3. Deadline for Petitioner to submit additional requested information.

The local government staff sends DEMLR staff a copy of the acknowledgment letter sent to Petitioner, for DEMLR's records.

Step 3: The local government considers the remission request, including any information submitted by petitioner in support of the remission request.

The local government shall consider the factors listed in N.C. Gen. Stat. § 113A-64.2(b) in determining its recommendation.

The local government shall make its recommendation consistent with the limitations in N.C. Gen. Stat. § 113A-64.2(b), (c), (d), and (e).

Step 4: The local government sends Petitioner a letter with its initial recommendation. It is recommended that the letter be sent by certified mail or any other method providing delivery confirmation.

The letter shall include a "Request for Oral Presentation" form, and the letter shall notify Petitioner of the following:

1. Petitioner may pay the penalty, or the modified penalty if applicable.

2. If Petitioner chooses to pay the penalty, send payment within thirty (30) days of receipt of the letter.
3. How to submit payment (how check should be made payable and where to send).
4. If allowed by the local government, that Petitioner may request a payment plan, and who to contact with a request.
5. If Payment is not received or a payment plan is not set up within thirty (30) days of receipt of the letter, the request for remission and supporting documents and the local government's recommendation and supporting documents will be forwarded to the SCC Civil Penalty Remissions Committee for a Final Agency Decision.
 - a. Where the penalty has been modified, the letter shall include notice that if the remission request proceeds to the SCC Civil Penalty Remissions Committee, the Committee may affirm the full original amount of the penalty.
6. If Petitioner desires to make an oral presentation to the SCC Civil Penalty Remissions Committee, Petitioner must complete and return the enclosed "Request for Oral Presentation" form within thirty (30) days of receipt of the letter.
7. Provide the address for where to mail the "Request for Oral Presentation" form.
8. The SCC Chairperson will review the request for oral presentation and the documents in the matter, and if the Chairperson determines there is a compelling reason to require an oral presentation, DEMLR staff will notify Petitioner of the date, time, and place that Petitioner's oral presentation can be made.
9. If Petitioner does not request an oral presentation, the final decision on Petitioner's request for remission will be made by the SCC Civil Penalty Remissions Committee based on the written record.

Step 5: If Petitioner requests to make an oral presentation:

1. The local government forwards the written record, including the request for oral presentation, to DEMLR staff, for a final agency decision by the SCC Civil Penalty Remissions Committee.
 - a. Details for what the written record should include, but is not limited to, are provided below in Step 7.
2. To be considered for the next scheduled meeting of the Civil Penalty Remissions Committee, the local government must forward the request for oral presentation and the complete documentation package to DEMLR staff at least forty-five (45) days before the next scheduled meeting of the Committee. In its discretion, the Committee may choose to hear the request at a later date.
3. Upon DEMLR's receipt of the request for oral presentation and complete documentation package from the local government:

- a. DEMLR staff sends a copy of the request for oral presentation and the documents in the matter to the SCC Chairperson, and the SCC counsel.
 - b. SCC Chairperson will notify DEMLR staff whether the request for oral presentation will be allowed.
 - c. SCC Chairperson determines when the SCC Civil Penalty Remissions Committee will hear the Petitioner's oral presentation.
 - i. To be considered for the next scheduled meeting of the Civil Penalty Remissions Committee meeting, the SCC Chairperson must receive the request from DEMLR staff at least thirty (30) days before the next scheduled meeting of the Committee.
 - ii. Requests will be heard in the order received, up to a number determined by the SCC Chairperson in consultation with the chairperson of the Civil Penalty Remissions Committee.
4. DEMLR staff sends Petitioner a letter acknowledging receipt of the remission request from the local government, and notifying Petitioner of the date, time, and place the Petitioner's oral presentation can be made. It is recommended that the letter be sent by certified mail or any other method providing delivery confirmation.

Step 6: If Petitioner does not request to make an oral presentation:

1. If Petitioner does not pay or enter into a payment plan (if allowed by the local government) within the time allowed, and the local government and the Petitioner are unable to resolve the matter and the local government determines the matter is at an impasse, the local government forwards the written record to DEMLR staff for a final agency decision by the SCC Civil Penalty Remissions Committee:
 - a. Details for what the written record should include, but is not limited to, are provided below in Step 7.
2. To be considered for the next scheduled meeting of the Civil Penalty Remissions Committee, the local government must forward the complete documentation package to DEMLR staff at least forty-five (45) days before the next scheduled meeting of the Committee. In its discretion, the Committee may choose to hear the request at a later date.
3. Upon DEMLR's receipt of the complete documentation package from the local government:
 - a. DEMLR staff notifies the SCC Chairperson of the remission request.
 - b. SCC Chairperson determines when the SCC Civil Penalty Remissions Committee will consider the remission request.
 - i. To be considered for the next scheduled meeting of the Civil Penalty Remissions Committee meeting, the SCC Chairperson must receive

the request from DEMLR staff at least thirty (30) days before the next scheduled meeting of the Committee.

- ii. Requests will be heard in the order received, up to a number determined by the SCC Chairperson in consultation with the chairperson of the Civil Penalty Remissions Committee.

4. DEMLR staff sends Petitioner a letter acknowledging receipt of the remission request from the local government, and notifying Petitioner that the SCC Civil Penalty Remissions Committee will consider the remission request and will issue a Final Agency Decision based on the written record. It is recommended that the letter be sent by certified mail or any other method providing delivery confirmation.

Step 7: DEMLR staff delivers the written record, including the remission request and the local government's recommendation, to the SCC Civil Penalty Remissions Committee at least two (2) weeks before the scheduled meeting of the Committee.

Confidential materials, including but not limited to those containing personally identifying information ("PII") or financial records, shall only be provided to the Civil Penalty Remissions Committee members, and only in accordance with procedures that protect the confidentiality of the information, by providing confidential materials to the Civil Penalty Remissions Committee members in a hard copy format.

DEMLR staff shall make all non-confidential materials available to the public on the SCC's website prior to the Civil Penalty Remissions Committee meeting.

The written record should include, but is not limited to, the following:

1. Summary sheet and timeline listing the following:
 - a. Case background and assessment
 - i. Date submitted plan approved;
 - ii. Inspection date(s);
 - iii. Violation(s) found;
 - iv. NOV date(s), and when NOV(s) delivered per proof of service;
 - v. Violator response to NOV, if any;
 - vi. CPA date, and when CPA delivered per proof of service; and
 - vii. CPA details: Penalty amounts and corresponding violations.
 - b. Remission request timeline details
 - c. Whether violator requested an oral presentation.
 - d. Whether violator has been assessed CPAs for previous violations.
2. Inspection report(s)
3. Pictures taken and considered in assessment of the penalty
4. NOV(s) and proof of service

5. CPA and proof of service
6. Other relevant information
7. The remission request includes:
 - a. Signed remission request waiver of right to an administrative hearing and stipulation of facts;
 - b. Completed justification for remission request; and
 - c. All supporting documentation submitted by Petitioner at any time during the remissions process.
8. The local government's recommendation for enforcement includes:
 - a. Recommendation letter and delivery confirmation if available; and
 - b. All supporting documentation.
9. The request for oral presentation, if applicable

Step 8: SCC Civil Penalty Remissions Committee considers the remission request and hears oral presentations (if applicable).

1. Oral presentation on the issuance of the penalty and the local government's recommendation should be made by the local government that issued the penalty.
2. If the local government requests, and DEMLR agrees, DEMLR may make the presentation on behalf of the local government.
3. In its discretion, the Committee may hear any recommendation by DEMLR staff as to the request, in DEMLR's role as supporting staff for the SCC.

Step 9: SCC Civil Penalty Remissions Committee issues a Final Agency Decision based upon the written record and any oral presentations (if applicable). The SCC Civil Penalty Remissions Committee shall consider the factors in N.C. Gen. Stat. § 113A-64.2(b).

1. Counsel to the SCC drafts the Final Agency Decision for signature.

Step 10: Final Agency Decision served on Petitioner.

1. Counsel to the SCC sends the Final Agency Decision to the Petitioner by certified mail or other service in accordance with Rule 4 of the Rules of Civil Procedure, with a cover letter notifying Petitioner:
 - a. Petitioner may seek judicial review in Superior Court by filing petition within thirty (30) days of receipt of the written copy of the Final Agency Decision.
 - i. A written copy must be served upon DEQ General Counsel
 - ii. Request to also serve a copy upon counsel to the SCC
 - b. If Petitioner does not seek judicial review, payment must be submitted to the local government within thirty (30) days of receipt of the written copy of the Final Agency Decision.

- i. How to make payment
 - ii. How check made payable
 - iii. Where to send payment
- c. If Petitioner fails to pay the penalty within thirty (30) days of receipt of the Final Agency Decision, the local government will seek to collect the amount due through a civil action in Superior Court.

Effective: February 20, 2020

Dr. Susan White, Chair
North Carolina Sedimentation Control Commission