

SECTION .1900 - ADMINISTRATIVE PENALTIES**15A NCAC 18C .1901 DEFINITIONS**

As used in the following rules, the term:

- (1) "Delegate" means any person to whom the Department has delegated authority in writing to act in its stead in relation to civil penalties;
- (2) "Hearing officer" means the presiding officer in a contested case hearing;
- (3) "Respondent" means the person against whom a penalty has been assessed.

*History Note: Authority G.S. 130A-22(f);
Eff. September 1, 1979;
Amended Eff. May 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
November 23, 2015.*

15A NCAC 18C .1902 ADMINISTRATIVE PENALTIES

The following rules provide the procedures and standards governing the assessment, remission, mitigation and appeal of administrative penalties imposed by the Department or its delegates under G.S. 130A-22(b) for violations of the North Carolina Drinking Water Act, Article 10 of Chapter 130A and 15A NCAC 18C.

*History Note: Authority G.S. 130A-22(f);
Eff. September 1, 1979;
Amended Eff. April 1, 2014; October 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
November 23, 2015.*

15A NCAC 18C .1903 WHO MAY ASSESS PENALTIES

Administrative penalties may be assessed by the Department or its delegate.

*History Note: Authority G.S. 130A-22(f);
Eff. September 1, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
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15A NCAC 18C .1904 WHEN PENALTIES MAY BE ASSESSED

Administrative penalties may be assessed against any person for violations as described in G.S. 130A-325.

*History Note: Authority G.S. 130A-22(f);
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
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15A NCAC 18C .1905 AMOUNT OF PENALTY ASSESSMENT

- (a) An administrative penalty may not exceed the amount which may be assessed for violations as prescribed in G.S. 130A-22(b).
- (b) Each day of a continuing violation shall constitute a separate violation.
- (c) Each violation of a specific provision of Article 10 of Chapter 130A, the rules issued thereunder, and any order pursuant thereto, shall be a separate violation.

*History Note: Authority G.S. 130A-22(f);
Eff. September 1, 1979;
Amended Eff. October 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
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15A NCAC 18C .1906 CONSIDERATIONS IN ASSESSING ADMINISTRATIVE PENALTIES

In determining the amount of the assessment, the Department or its delegates shall consider the following criteria and shall cite the provisions that are applicable:

- (1) nature of the violation and the degree and extent of the harm, including the following:

- (a) for a violation of the North Carolina Drinking Water Act, Article 10 of Chapter 130A, and the rules in this Subchapter:
 - (i) type of violation,
 - (ii) type of contaminant involved,
 - (iii) duration,
 - (iv) cause (whether resulting from a negligent, reckless or intentional act, or omission),
 - (v) potential effect on public health and the environment,
 - (vi) effectiveness of responsive measures taken by the violator,
 - (vii) damage to private property, and
 - (viii) size of the water system and population exposed;
- (b) for a violation of an order issued under the North Carolina Drinking Water Act, Article 10 of Chapter 130A:
 - (i) subject matter of order,
 - (ii) duration,
 - (iii) cause (whether resulting from a negligent, reckless or intentional act, or omission),
 - (iv) type of violation, if any,
 - (v) potential effect on public health and the environment, and
 - (vi) effectiveness of responsive measures taken by violator;
- (c) for refusing to allow an authorized representative of the Commission for Public Health, any local board of health, or the Department a right of entry as provided for in G.S. 130A-17:
 - (i) type of other violation, if any,
 - (ii) duration of refusal, and
 - (iii) potential effect on public health and the environment;
- (d) for failure to give adequate public notice as required by G.S. 130A-324:
 - (i) inadequacy of type of notice,
 - (ii) misleading in nature,
 - (iii) delay in providing notice, and
 - (iv) potential effect on public health from failure to give adequate notice;
- (2) cost of rectifying any damage; and
- (3) the violator's previous record in complying or not complying with the North Carolina Drinking Water Act, Article 10 of Chapter 130A and the rules in this Subchapter.

History Note: Authority G.S. 130A-22(f); 130A-17; 130A-324; Eff. September 1, 1979; Amended Eff. April 1, 2014; October 1, 1984; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

15A NCAC 18C .1907 PROCEDURE FOR ASSESSMENT

- (a) Depending on the violation involved, the Department or its delegates may issue a notice of penalty assessment immediately or grant the violator a period of time within which to cease the violation.
- (b) For all violations for which a penalty is assessed, a notice of such action shall be sent to the respondent by registered or certified mail. The notice shall describe the nature of the violation with reasonable particularity, the amount of the penalty for each violation, that each day of a continuing violation constitutes a separate violation, advise that the penalty is now due or that it will become due at the end of a specified time, and advise the respondent of his rights of appeal.
- (c) The Department or its delegates may modify a penalty upon finding that additional or different facts should have been considered in determining the amount of the assessment.

History Note: Authority G.S. 130A-22(f); Eff. September 1, 1979; Amended Eff. May 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.

15A NCAC 18C .1908 IMMINENT HAZARD

If violation of the rules or law presents an imminent hazard to the public health as determined by the Secretary, an order may be issued pursuant to G.S. 130A-322.

*History Note: Authority G.S. 130A-22(f);
Eff. September 1, 1979;
Amended Eff. October 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
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15A NCAC 18C .1909 PAYMENTS: HEARING

- (a) Within 30 days after receipt of notification of a penalty assessment, the respondent must tender payment, or submit in writing a request for an administrative hearing. All appeals shall be made in accordance with G.S. 150B.
- (b) Payment may be tendered in conjunction with a hearing request and in such case, the payment will be accepted as conditional upon final action.
- (c) This Rule shall not preclude informal conferences concerning the penalty assessed.
- (d) Whenever an administrative hearing is scheduled, to avoid undue costs and delay, the respondent will be required to state all the issues in dispute and the Department will be required to hold only one administrative hearing.
- (e) The Department will acknowledge the receipt of all payments.

*History Note: Authority G.S. 130A-22(f);
Eff. September 1, 1979;
Amended Eff. May 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
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15A NCAC 18C .1910 STAY OF PENALTY ASSESSMENT

When an administrative hearing is requested for a purpose other than remission or mitigation of the penalty assessed, the penalty will be stayed as of the date of said request until service of the final decision or other settlement of the matter.

*History Note: Authority G.S. 130A-22(f);
Eff. September 1, 1979;
Amended Eff. May 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
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15A NCAC 18C .1911 WAIVER OF ADMINISTRATIVE HEARING

A respondent waives his right to a hearing when he:

- (1) submits a written waiver to the Department or its delegates of his right to an administrative hearing,
- (2) fails to request a hearing within 30 days of receipt of notice of penalty assessment as provided for in Rule .1909 of this Subchapter, or
- (3) fails to attend a scheduled administrative hearing.

*History Note: Authority G.S. 130A-22(f);
Eff. September 1, 1979;
Amended Eff. May 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
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15A NCAC 18C .1912 REFERRAL

If any administrative penalty as finally assessed is not paid within 60 days after receipt of notice of penalty assessment where no administrative hearing was requested or within 60 days after service of a written copy of the decision as provided for in G.S. 150B-36 where an administrative hearing was requested, the Secretary shall request the Attorney General to commence an action to recover the amount of the assessment.

*History Note: Authority G.S. 130A-22(f);
Eff. September 1, 1979;
Amended Eff. September 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
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15A NCAC 18C .1913 RIGHT OF ENTRY AND INSPECTION

(a) Any supplier of water or other person subject to drinking water regulations shall, at any time, allow the Secretary, or a designated representative, upon presenting appropriate credentials and a written notice of inspection, to enter any establishment, facility or other property of such supplier or other person to determine whether such supplier or other person has acted or is acting in compliance with the requirements of the North Carolina Drinking Water Act (G.S. 130A-311 through 130A-328) or the rules of 15A NCAC 18C. Such inspection may include inspection, at reasonable times, of records, files, papers, processes, controls and facilities, or testing of any feature of a public water system, including its raw water source.

(b) If entry is refused, then the Secretary or designated representative may obtain an administrative search warrant pursuant to the requirements of G.S. 15-27.2.

*History Note: Authority G.S. 130A-22(f);
Eff. December 19, 1979;
Amended Eff. October 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
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