NC AWWA / WEA
Regulatory 101 Seminar
Compliance and Enforcement
McKimmon Center • Raleigh, NC
August 20, 2003
Compliance Programs in DENR

- Air Quality
- Coastal Management
- Environmental Health
- Land Resources
- Waste Management
- Water Quality

Air Quality • Coastal Management • Food, Lodging & Institutional Sanitation • Mammography • On-Site Wastewater • Public Water Supply • Radioactive Materials • Shellfish Sanitation • Sleep Products • Tanning • X-Ray • Dam Safety • Erosion and Sedimentation Control • Mining • Solid Waste • Hazardous Waste • Underground Storage Tanks • Groundwater • National Pollutant Discharge Elimination System (NPDES) • Non-Discharge
Regional Offices

**Asheville**
- Interchange Building
- 59 Woodfin Place
- Asheville, NC 28801-2482
- 828/251-6208
- FAX 828/251-6452

**Winston-Salem**
- 585 Waughtown Street
- Winston-Salem, NC 27107
- 336/771-4600
- Main FAX 336/771-4631

**Raleigh**
- 3800 Barrett Drive
- Raleigh, NC 27609
- 919/571-4700
- FAX 919/571-4718

**Washington**
- 943 Washington Square Mall
- Washington, NC 27889
- 252/946-6481
- FAX 252/975-3716

**Mooresville**
- 919 North Main Street
- Mooresville, NC 28115
- 704/663-1699
- FAX 704/663-6040

**Fayetteville**
- Systel Building,
  225 Green St., Suite 714
- Fayetteville, NC 28301-5094
- 910/486-1541
- FAX 910/486-0707

**Wilmington**
- 127 Cardinal Drive Ext.
- Wilmington, NC 28405
- 910/395-3900
- FAX 910/350-2004
Ensuring sustainable marine and estuarine fisheries.

Jurisdiction: all coastal waters to 3 miles offshore.

Sixty-one officers monitor 2.5 million acres of water and over 4,000 miles of coastline.

8,000 commercial fishermen and 1.5 million recreational anglers enjoy the state’s marine resources.

(Other responsibilities beyond traditional civil environmental enforcement)
Baseline Assumptions

- Compliance is a regulatory expectation
- There is no single compliance profile in DENR
- Enforcement is a tool that can achieve compliance
- There are other tools (e.g. education, technical assistance, positive or negative performance incentives)
Enforcement Principles

- Compliance is the first step toward the ultimate goal of stewardship.
- Enforcement will be balanced with education, technical assistance, and incentives to achieve compliance and encourage stewardship.
- Enforcement will be an effective deterrent against future violations.
Enforcement Principles

- Enforcement actions will increase in severity for regulated entities with poor compliance histories.
- The cost of non-compliance should be greater than the cost of compliance.
- Resources will be used proportional to the potential impact on human health and the environment and in keeping with statutory responsibilities.
Enforcement Principles

- DENR will support the development and use of alternative tools to traditional enforcement that achieve compliance and encourage going beyond compliance.
- DENR will trust, empower, and support its employees to make enforcement decisions and use enforcement discretion where appropriate.
- DENR will ensure that its employees are well trained and informed to make enforcement decisions which are measurably consistent.
Enforcement Principles

- Enforcement policies, procedures, pertinent data, and other critical information will be accessible to any interested party.
- Enforcement decisions will be defensible, documented, and proportional to the degree of potential harm.
- DENR will foster partnerships internally and externally to realize shared responsibilities in environmental stewardship.
Encourage responsible environmental behavior through enforcement programs that are strong, fair, and effective.

- **Strong** - meet serious violations with serious consequences.
- **Fair** - consistently assess and collect civil penalties.
- **Effective** - link actions with results and give the public a measure of confidence in environmental enforcement.
Enforcement Strategy

**STRONG**: Meet serious violations with serious consequences.

- Assess Maximum penalties for willful, repeat and serious violations that impact the environment or public health
- Pursue criminal prosecution authorities where appropriate and when civil enforcement has proven ineffective
Maximum Penalties

• **Air Quality** – $10,000 per day per violation

• **Coastal Management** – $250 per day (minor development), $2500 per day (major development)

• **Erosion and Sediment Control** – $5,000 per day

• **Dam Safety** – $500 per day for each day of willful violation

• **Hazardous Waste** – $25,000 per day

• **Mining** – $500 per day; Mining without a permit $5,000 per day
## Maximum Penalties

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non-Discharge</strong></td>
<td>$10,000 per violation per day; $25,000 if assessed in the past five years</td>
</tr>
<tr>
<td><strong>NPDES</strong></td>
<td>$10,000 per violation per day; $25,000 if assessed in the past five years</td>
</tr>
<tr>
<td><strong>Solid Waste</strong></td>
<td>$5,000 per day; $25,000 per day for medical waste disposed on water first violation, $50,000 per day for subsequent violations; $50 per violation per tire improperly disposed; $50 per violation for improper disposal of lead-acid batteries; $100 for improper disposal of white goods or failure to remove refrigerants</td>
</tr>
</tbody>
</table>
Maximum Penalties

• Oil Pollution/Hazardous Substance Control – $5,000 per day

• On-Site Wastewater – $50 per day (\leq 480 gallon systems); $300 per day (>480 gallon systems)

• Public Water Supply – $25,000 per day

• Radiation Protection – $10,000 per day, with each day of continuing violation a separate violation

• Underground Storage Tanks – $10,000 per day per violation

• Well Construction – $100 per day per violation
Enforcement Strategy

FAIR: Vigorously assess and collect penalties in a consistent manner.

- Report the amount of civil penalty assessment attributable to willful and intentional acts, repeat violations or violations that pose a serious threat to the environment
- Standardize and strengthen the appeals process
- Identify and close the gap between the amount of penalty assessed and the amount of penalty collected
- Delegate civil penalty authority in each division to allow timely enforcement
How are penalties assessed?

Most programs are bound by statute or regulation to consider the following factors in determining the amount of a penalty:

- Degree and extent of harm;
- Duration and gravity of the violation;
- Effect on media (air, water, land);
- Effect on public health;
- Cost of rectifying the damage;
- Any money saved by noncompliance;
- Cause (i.e. whether the violation resulted from negligent, reckless, willful, or intentional act or omission);
- Compliance history (prior record) of the violator.
How are penalties assessed?

Penalty Matrix:
- Relationship between the degree of harm and the extent of deviation from the rules

Penalty Tree:
- Used to guide decision-making.
- Base penalty amount - increased or decreased based on aggravating or mitigating factors
<table>
<thead>
<tr>
<th>Degree of Harm</th>
<th>Degree of Deviation from Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Potential</td>
</tr>
<tr>
<td></td>
<td>Actual</td>
</tr>
<tr>
<td>MAJOR</td>
<td>MAJOR 80 – 100%</td>
</tr>
<tr>
<td>MODERATE</td>
<td>MODERATE 60 – 80%</td>
</tr>
<tr>
<td>MINOR</td>
<td>MINOR 44 – 60%</td>
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</tbody>
</table>

Degree of Harm Factors:
- Duration of Violation
- Area of Impact (size)
- Proximity to receptors
- Sector impacts (air, land, water)
- Health Impacts

Degree of Deviation Factors:
- Administrative / Record Keeping
- Indirect sector impact
- Direct sector impact
- Undermines statute / regulation

Generic Penalty Matrix Worksheet
## 2.0 NON-PERMITTED ACTIVITY

<table>
<thead>
<tr>
<th>Class</th>
<th>Violation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>operating without a permit</td>
<td>$4,000</td>
</tr>
<tr>
<td>2.2</td>
<td>failure to submit reports</td>
<td>$500</td>
</tr>
</tbody>
</table>

Generic Penalty Tree
Enforcement Strategy

EFFECTIVE: Link actions with results.
Provide the public reason for confidence.

- Make the enforcement process clear to the public
- Install a departmental information management system that shares data across media programs and with the public for use in monitoring activities and decision-making
- Produce an annual compliance report
- Increase the publicity of significant enforcement actions
Enforcement - Microsoft Internet Explorer

Departmental Enforcement
Enforcement Principles
Enforcement Assessment 2000
Penalty Policy for Self-Reported Violations
DENR Compliance Report 2000
DENR Compliance Report 2001
Flowcharts

Air
Civil penalty assessments
Special Orders by Consent
Stage I vapor recovery
compliance
Smoking vehicle complaint form
Vehicle inspection and
maintenance program

Coast/Fisheries
List of CAMA violators
Bycatch Reduction Devices
Polluted Area Proclamations
Fisheries Proclamations

Land Resources
Report a possible violation to the
Sedimentation Pollution Control
Act

Waste Management
Underground storage tank civil penalties
Hazardous waste civil penalties
Solid waste civil penalties

Water
Groundwater Enforcement
Actions
Water Quality Enforcement
Actions

NCDENR, 1601 Mail Service Center, Raleigh, NC 27699-1601
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Environmental Regulatory Compliance Activity in Calendar Year 2001

February 12, 2003

Contact:
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Raleigh, NC 27699-1601
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Kari.Barsness@ncmail.net
Enforcement Process

- Inspection
- Violation discovered
- Responsible Party notified
- Re-inspection (If site had not returned to compliance…)
- Enforcement decided
- Responsible Party pays, asks for reduced penalty, or appeals to higher authority
1. Enforcement process begins with the discovery of a violation. This discovery may be through an inspection, a complaint by a concerned citizen or routine monitoring reports that the responsible party (RP) is required to submit.

When a violation is discovered, the inspector will consult with the supervisor to decide the next step of enforcement. Most programs have an enforcement coordinator in the central office who will work with the regional office staff to begin the enforcement process.
2. Depending on the nature of the violation, enforcement options may include a notice of deficiency (NOD), notice of violation (NOV), administrative order on consent (AOC), or a unilateral compliance order. First time violators usually receive an NOV with a deadline for compliance. If they do not meet the compliance deadline, if it is a repeat violator, or if the nature of the violation is serious, then enforcement escalates and will likely include a civil penalty assessment (CPA). Some programs will use temporary restraining orders or injunctions to ensure environmental relief.
If a CPA is to be issued, enforcement staff will prepare an enforcement package that includes the inspection report, lab reports, photographs and any other information that supports the case. The enforcement package will be reviewed by internal staff and may be reviewed by the Attorney General’s Office (AGO). Once the review is complete, division management (usually the division director) will assess a civil penalty.

Enforcement staff prepare enforcement package

Enforcement package goes through agency review including Attorney General’s Office (AGO)

Penalty is assessed, usually by the Division Director - CPA is sent to RP

Next Page...
4. When an RP receives a penalty, they may pay the penalty, request a reduced penalty through informal settlement or remission, or appeal to the Office of Administrative Hearings (OAH).
Measuring Compliance

- Timeliness
- Penalty Assessments and Collections
- Uncollectible Penalties
- Compliance Rates
- Return to Compliance Rates
- Repeat Violations
Measuring Compliance

- 116,991 regulated entities
- 62,026 Inspections per year
- 219.2 Inspection FTEs*

*FTE = Full-Time Equivalent based on a 40-hour work week
Timeliness

Number of days from discovery of violation to penalty paid in full
Penalty Assessments

- 1,509 Penalties Assessed
- $5.2 Million Assessed
- $2.1 Collected

Collection rate expected to be much higher. It takes several years to fully collect penalties.
Penalty Assessments

Largest Assessment

$131,000

Hazardous Waste

Air Quality
Coastal
Dam Safety
Erosion/Sed Control
Groundwater
Haz Waste
Mining
NPDES
Non-Discharge
On-Site Wastewater
Public Water Supply
Radioactive Materials
Solid Waste
Tanning
UST
X-Ray
Penalty Assessments

Average Assessment

- Air Quality
- Coastal
- Dam Safety
- Erosion/Sed Control
- Groundwater
- Hazardous Waste
- Mining
- NPDES
- Non-Discharge
- On-Site Wastewater
- Public Water Supply
- Radioactive Materials
- Solid Waste
- Tanning
- UST
- X-Ray

Hazardous Waste: $16,669
Compliance Rates

Percent of violators in 2000 that repeated violations in 2001

- Air Quality: 9%
- Coastal: 4%
- ESC: 2%
- Groundwater: 8%
- Haz Waste: 0%
- Mining: 0%
- NPDES: 30%
- Non-Discharge: 17%
- PWS: 3%
State incentive programs

[Images of various environmental programs and initiatives]
ESI Tiers

Tier one: Environmental Partner

Tier two: Environmental Steward

ESI = Environmental Stewardship Initiative
Tier one: *Environmental Partner*

Organizations that are beginning to develop an EMS

- American & Efird Inc.
- Baker Furniture
- Duke University
- Highland Industries Inc.
- Hunter Farms Dairy
- Engineered Sintered Components Company
- Flextronics International NC Inc.
- North Carolina Natural Gas Corporation
- N.C. Zoological Park, Horticulture Section
- City of Shelby First Broad River WWTP
- Camp Lejeune Marine Corps Base
- Smithfield Packing Company, Tar Heel Division
- Fort Bragg – 18th Airborne Corps
- Engineered Sintered Components Company
- City of Gastonia Wastewater Treatment Plant
What do Environmental Partners have to do?

- Document commitment to compliance
- Set environmental performance goals
- Commit to implementing and maintaining an EMS
- Report annually

EMS = Environmental Management System
Wait a minute, what was that about reporting?

- Progress toward goals
- Net reductions of releases, emissions and disposal
- Net reductions in the use of energy and water
- Any reportable non-compliance events
What’s in it for a Partner?

- Technical assistance and training.
- Networking opportunities.
- Mentoring
- Recognition
- Single point of contact within DENR.
- Benefits deemed appropriate by the Secretary based on recommendations from the advisory workgroup.
Tier two: *Environmental Steward*

Organizations that have an EMS and are committed to exemplary environmental performance.
What do Environmental Stewards have to do?

- Set aggressive environmental performance goals
- Commit to exceed compliance
- Functional EMS certified by third party or reviewed by DENR staff
- No significant violations for two years
- Report annually
- Be a mentor to partners
- Interactive communication with community
- EMS integrated into core business
What’s in it for a Steward?

- Recognition
- Member of Environmental Stewardship Forum
- Priority membership on the advisory workgroup.
- Established time frames for permit decisions.
- Consideration for regulatory innovations
Advisory Workgroup Members

- Carolyn Anderson ———— Progress Energy
- Dr. Richard Andrews ——— UNC-Chapel Hill
- Alan Briggs ———— Save Our State
- Jimmy Carter (chair) ——— DENR
- Preston Howard Jr. ——— MCIC
- Matt Jordan ———— City of Gastonia
- Jane Preyer ———— Environmental Defense
- Larry Spence ———— Ready Mixed Concrete
- Steve Wall ———— Conservation Council of N.C.
Gary Hunt · 919-715-6508 · gary.hunt@ncmail.net
Single source of information for all of DENR’s programs.

(877) 623-6748

Or visit our website:

www.enr.state.nc.us