

CHAPTER VIII

ENFORCEMENT

SECTION I PENALTIES

- (A) Any Person who violates any of the provisions of these Regulations is subject to a criminal penalty. Any Person who willfully violates any provision of these Regulations, or any order issued by the Director pursuant thereto, shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars or imprisonment not to exceed thirty (30) days.
- (B) Any Person, who violates any of the provisions of these Regulations is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs. No penalty shall be assessed until the Person alleged to be in violation has been notified of the violation. The notice of violation shall identify the nature of the violation, set forth those measures necessary to comply with these Regulations and provide a specific time period for compliance. The notice may be served by mail, hand delivery or any other means determined to give actual notice. Refusal to accept the notice shall not relieve the violator of his obligation to comply with these Regulations or to pay such penalty.
- (C) The maximum civil penalty for each violation of these Regulations is \$10,000.00. Each day of violation shall constitute a separate violation.
- (D) In determining the amount of a civil penalty, all relevant mitigating and aggravating factors shall be considered including, but not limited to the following: the degree and extent of harm caused by the violation; the cost of rectifying the damage; whether the violator saved money through noncompliance; whether the violation was committed willfully; whether the violator reported the violation to the Department; and the prior record of the violator in complying or failing to comply with these Regulations or any other local, or State or federal pollution control ordinance or regulation. The amount of per diem penalty set in paragraph (C) of this Section may vary based on the aforementioned relevant mitigating and aggravating factors. The “Mecklenburg County Groundwater Enforcement Guidance” document as approved by the Director will serve as the guiding document for assessment of penalties.

- (E) The Director shall determine the amount of the civil penalty assessment and shall notify the Person responsible for the violation of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be issued in writing and sent via registered or certified mail or other means of determined to give actual notice to the Person responsible for the violation and shall direct the violator to either pay the assessment or appeal the assessment as described in Section III of this Chapter within thirty (30) days of receipt of notice. If an alleged violator does not pay a civil penalty assessed by the Director within thirty (30) days after it is due, or does not appeal a civil penalty as provided in Section III of this Chapter, the Director shall request the County Attorney to institute a civil action to recover the amount of the assessment. The civil action shall be brought in Mecklenburg County General Court of Justice or in any other court of competent jurisdiction. A civil action must be filed within three (3) years of the date the assessment was due.
- (F) Civil penalties collected pursuant to these Regulations shall be credited to the Mecklenburg County general fund as non-tax revenue, or to such other fund as determined by the Board of County Commissioners.

SECTION II INJUNCTIVE RELIEF

- (A) Whenever the Director has reasonable cause to believe that any Person is violating or threatening to violate these Regulations or any term, condition, or provision of an approved permit, the Director may, either before or after the institution of any other action or proceeding authorized by these Regulations, authorize the County Attorney to institute a civil action in the name of Mecklenburg County for injunctive relief to restrain the violation or threatened violation. The action shall be brought pursuant to G.S. 130A-18 in Mecklenburg County Superior Court.
- (B) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of these Regulations.
- (C) The Director shall also have the authority to exercise those remedies listed in G.S. 130A-17, -19 and -20 as necessary to enforce these Regulations or to protect the public health.

SECTION III APPEAL

(A) Disapproval or modification of well permits

1. The disapproval or modification of any proposed well by the Director shall entitle the Person submitting the Plan ("Petitioner") to a public hearing before the Groundwater Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 30 Days after receipt of written notice of the disapproval or modification. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Groundwater Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Chapter and the Groundwater Advisory Committee shall have no jurisdiction to hear the appeal.
2. Within five (5) Days of receiving the demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the demand for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted by the Committee in accordance with the provisions of Section III (C) of this Chapter.
3. Any party aggrieved by the decision of the Committee with regard to the disapproval or modification of a proposed well following the public shall have thirty (30) Days from the receipt of the decision of the Committee to file a petition for review in the nature of certiorari in Superior Court with the Clerk of the Mecklenburg County Superior Court.

(B) Issuance of a Notice of Violation (including the Assessment of a Civil Penalty)

1. The issuance of a notice of violation with an assessment of a civil penalty by the Director shall entitle the Person responsible for the violation of the Ordinance ("Petitioner") to a public hearing before the Groundwater Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within thirty (30) Days of the receipt of the notice of violation, assessment of a civil penalty or order of restoration. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the

- Groundwater Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under these Regulations and the Groundwater Advisory Committee shall have no jurisdiction to hear the appeal.
2. Within five (5) Days of receiving the Petitioner's demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the request for a hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to the provisions of Section III (C) of this Chapter.
 3. Any party aggrieved by the decision of the Committee with regard to the issuance of a notice of violation, assessment of civil penalties or order of restoration shall have thirty (30) Days from the receipt of the decision of the Committee to file a petition for review in the nature of certiorari in Superior Court with the Clerk of the Mecklenburg County Superior Court.
- (C) Hearing Procedure. The following provisions shall be applicable to any hearing conducted by the Committee pursuant to Section II (A) or (B) or Section IV of this Chapter.
1. At the hearing, Petitioner and the Director shall have the right to be present and to be heard, to be represented by counsel, and to present evidence through witnesses and competent testimony relevant to the issue(s) before the Committee.
 2. Rules of evidence shall not apply to a hearing conducted pursuant to these Regulations and the Committee may give probative effect to competent, substantial and material evidence.
 3. At least seven (7) Days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented unless both parties otherwise agree. The parties shall submit a copy of this information to the Clerk. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of a quorum of the Committee.

4. Witnesses shall testify under oath or affirmation to be administered by the Court Reporter or another duly authorized official.
5. The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing. Both the representative for the Department or Director and for the Petitioner shall have the right to cross-examine witnesses.
6. At the conclusion of the hearing, the Committee shall render its decision on the evidence submitted at such hearing and not otherwise.
 - a. If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Director's actions (including the amount assessed as a civil penalty) with regard to either disapproving or modifying a proposed permit, issuing a notice of violation, assessing a civil penalty, ordering restoration, or granting or denying a request for a variance are true and substantiated, the Committee shall uphold the action on the part of the Director.
 - b. If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Director's actions (including the amount assessed as a civil penalty) are not true and substantiated, the Committee shall, as it sees fit either reverse or modify any order, requirement, decision or determination of the Director, including granting a variance. If the Committee finds that the violation has occurred, but that in setting the amount of a penalty the Director has not considered or given appropriate weight to either mitigating or aggravating factors, the Committee shall either decrease or increase the per day civil penalty within the range allowed by these Regulations.
 - c. Any decision of the Committee which modifies the amount of the civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which mitigating or aggravating factors exist and the appropriate weight that should have been given to such factors by the Director in setting the amount of the civil penalty levied against the Petitioner.

7. The Committee shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the Committee shall be based on findings of fact and conclusions of law to support its decision.
8. The Committee shall send a copy of its findings and decision to the Applicant/Petitioner and the Director. If either party contemplates an appeal to a court of law, the party may request and obtain, at that party's own cost, a transcript of the proceedings.
9. The decision of the Committee shall constitute a final decision, subject to the right of the Petitioner or Director to file a petition for review as provided in Section III (B) 3 or Section IV (D) of this Chapter.

SECTION IV VARIANCE

- (A) The Director may grant a variance from any construction standard under these Regulations except those required by State law or regulations. Any variance will be in writing and may be granted upon written application to the Director by the person responsible for the construction of the well for which the variance is sought, if the Director finds facts to support the following conclusions:
1. That the use of the well will not endanger human health and welfare of the groundwater.
 2. That construction in accordance with the standards was not technically feasible in such a manner as to afford a reasonable water supply at a reasonable cost.

The Director may require the variance applicant to submit such information as he deems necessary to make a decision to grant or deny the variance. The Director may impose such conditions on a variance or the use of a well for which a variance is granted as he deems necessary to protect human health and welfare and the groundwater resources. The brief findings of fact supporting any variance shall be in writing and made part of the variance.

- (B) A person requesting a variance to the Mecklenburg Groundwater Well Regulations may first seek the variance from the Director. In the event the Director denies a variance or an aggrieved party disputes the issuance of a variance, the person requesting the variance or the aggrieved party may appeal the Directors decision to the Groundwater Advisory

Committee ("Committee") by submitting written demand for a hearing to the Clerk of the Committee ("Clerk") within 30 Days after receipt of written notice of the Director's action granting or denying the request for a variance. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Groundwater Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under these Regulations and the Groundwater Advisory Committee shall have no jurisdiction to hear the appeal.

- (C) Within five (5) Days of receiving the demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the demand for a hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted by the Committee in accordance with the provisions of Section III (C) of this Chapter.
- (D) Any party aggrieved by the decision of the Committee with regard to a decision on a variance appeal shall have thirty (30) Days from the receipt of the decision of the Committee to file a petition for review in the nature of certiorari in Superior Court with the Clerk of the Mecklenburg County Superior Court.