

15A NCAC 07J .0409 CIVIL PENALTIES

(a) Purpose and Scope. This Rule provides the procedures and standards governing the assessment, remission, settlement, and appeal of civil penalties assessed by the Coastal Resources Commission and the Director pursuant to G.S. 113A-126(d).

(b) Definitions. The terms used in this Rule shall be as defined in G.S. 113A-103 and as follows:

- (1) "Act" means the Coastal Area Management Act of 1974, G.S. 113A-100 through 134.
- (2) "Delegate" means the Director or other employees of the Division of Coastal Management, or local permit officers to whom the Commission has delegated authority to act pursuant to this Rule.
- (3) "Director" means the Director, Division of Coastal Management.
- (4) "Respondent" means the person to whom a notice of violation has been issued or against whom a penalty has been assessed.

(c) Investigative costs. In addition to any civil penalty, the costs incurred by the Division for any investigation, inspection, and monitoring associated with assessment the civil penalty may be assessed pursuant to G.S. 113A-126(d)(4a). The amount of investigative costs assessed shall be based upon factors including the amount of staff time required for site visits, investigation, enforcement action, interagency coordination, and for monitoring restoration of the site.

(d) Notice of Violation. The Commission authorizes employees of the Division of Coastal Management to issue in the name of the Commission notices of violation to any person engaged in an activity which constitutes a violation for which a civil penalty may be assessed.

(e) Procedures for Notification of Civil Penalty Assessment.

- (1) The Commission delegates to the Director the authority to assess civil penalties according to the procedures set forth in Paragraph (g) of this Rule.
- (2) If restoration of affected resources is not required, the Director shall issue a civil penalty assessment within 90 days from the date of the Notice of Violation. If restoration of affected resources is required, the Director may issue a civil penalty assessment within 60 days after the Division determines that restoration of the adversely impacted resources is complete or once the date restoration was required has passed without having been completed.

(f) Procedures for Determining the Amount of Civil Penalty Assessment.

- (1) Pursuant to G.S. 113A-126(d)(1), penalties for major development violations, including violations of permit conditions, shall be assessed as follows:
 - (A) Major development that could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee as set forth in Rule .0204 of this Subchapter, plus investigative costs.
 - (B) Major development that could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee, plus a penalty pursuant to Schedule A of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern (AEC) or coastal resource as listed within Schedule A of this Rule, the penalties for each affected AEC shall be combined not to exceed ten thousand dollars (\$10,000) per G.S. 113A-126(d)(1). Any structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules.

**SCHEDULE A
Major Development Violations**

Penalties for Major Development Permit Violations By Size of Violation (sq. ft.)

| Area of Environmental Concern Affected | ≤ 100 | 101-500 | 501-1,000 | 1001-3000 | 3001-5000 | 5001-8000 | 8001-11,000 | 11,001-15,000 | 15,001-20,000 | 20,001-25,000 | >25,000 |
|---|-------|---------|-----------|-----------|-----------|-----------|-------------|---------------|---------------|---------------|----------|
| Estuarine Waters or Public Trust Areas (1) | \$250 | \$375 | \$500 | \$1,500 | \$2,000 | \$3,500 | \$5,000 | \$7,000 | \$9,000 | \$10,000 | \$10,000 |

| | | | | | | | | | | | |
|--|-------|-------|-------|---------|---------|---------|---------|---------|---------|----------|----------|
| Primary Nursery Areas | \$100 | \$225 | \$350 | \$850 | \$1,350 | \$2,850 | \$4,350 | \$3,000 | \$1,000 | n/a | n/a |
| Mudflats and Shell Bottom | \$100 | \$225 | \$350 | \$850 | \$1,350 | \$2,850 | \$4,350 | \$3,000 | \$1,000 | n/a | n/a |
| Submerged Aquatic Vegetation | \$100 | \$225 | \$350 | \$850 | \$1,350 | \$2,850 | \$4,350 | \$3,000 | \$1,000 | n/a | n/a |
| Coastal Wetlands | | | | | | | | | | | |
| | \$250 | \$375 | \$500 | \$1,500 | \$2,000 | \$3,500 | \$5,000 | \$7,000 | \$9,000 | \$10,000 | \$10,000 |
| Coastal Shorelines | | | | | | | | | | | |
| | \$250 | \$350 | \$450 | \$850 | \$1,250 | \$2,450 | \$3,650 | \$5,250 | \$7,250 | \$9,250 | \$10,000 |
| Wetlands (2) | \$100 | \$200 | \$300 | \$700 | \$1,100 | \$2,300 | \$3,500 | \$4,750 | \$2,750 | \$750 | n/a |
| ORW- Adjacent Areas | \$100 | \$200 | \$300 | \$700 | \$1,100 | \$2,300 | \$3,500 | \$4,750 | \$2,750 | \$750 | n/a |
| Ocean Hazard System (3)(4) | | | | | | | | | | | |
| | \$250 | \$350 | \$450 | \$850 | \$1,250 | \$2,450 | \$3,650 | \$5,250 | \$7,250 | \$9,250 | \$10,000 |
| Primary or Frontal Dune | \$100 | \$200 | \$300 | \$700 | \$1,100 | \$2,300 | \$3,500 | \$4,750 | \$2,750 | \$750 | n/a |
| Public Water Supplies (5) | | | | | | | | | | | |
| | \$250 | \$350 | \$450 | \$850 | \$1,250 | \$2,450 | \$3,650 | \$5,250 | \$7,250 | \$9,250 | \$10,000 |
| Natural and Cultural Resource Areas (6) | | | | | | | | | | | |
| | \$250 | \$350 | \$450 | \$850 | \$1,250 | \$2,450 | \$3,650 | \$5,250 | \$7,250 | \$9,250 | \$10,000 |

- (1) Includes the Atlantic Ocean from the normal high water mark to three miles offshore.
- (2) Wetlands that are jurisdictional by the Federal Clean Water Act.
- (3) If the AEC physically overlaps another AEC, use the greater penalty schedule.
- (4) Includes the Ocean Erodible, Inlet Hazard Area, and Unvegetated Beach Area.
- (5) Includes Small Surface Water Supply, Watershed and Public Water Supply Well Fields.
- (6) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.
- (C) Assessments for violations by public agencies, i.e. towns, counties, and State agencies shall be determined in accordance with Parts (1)(A) and (B) of this Paragraph.
- (D) Willful and intentional violations. The penalty assessed in accordance with Parts (1)(A) and (B) of this Paragraph. shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Subparagraph shall not exceed ten thousand dollars (\$10,000) or be less than two thousand dollars (\$2,000) for each separate violation. For the purposes of G.S. 113A-126(d)(2), the following actions shall be considered willful and intentional:
 - (i) the person received written instructions from one of the Commission's delegates that a permit would be required for the development and subsequently undertook development without a permit;
 - (ii) the person received written instructions from one of the Commission's delegates that the proposed development was not permissible under the Commission's rules, or received denial of a permit application for the proposed activity, and subsequently undertook the development without a permit;
 - (iii) the person committed previous violations of the Commission's rules; or
 - (iv) the person refused or failed to restore a damaged area as ordered by one of the Commission's delegates.

- (E) Assessments against contractors. Any contractor, subcontractor, or person functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (D) of this Subparagraph and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.
- (F) Assessments for Continuing violations.
- (i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease or restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty.
- (ii) Refusal or failure to restore a damaged area as directed in the restoration order shall be considered a continuing violation and shall be assessed an additional penalty. When resources continue to be affected by the violation, the amount of the penalty shall be determined according to Part (B) of this Subparagraph. The continuing penalty period shall be calculated from the date specified in the restoration order which accompanies the notice of violation for the unauthorized activity to cease or restoration to be completed and run until:
- (I) the Division determines that the terms of the restoration order are satisfied;
- (II) the respondent enters into negotiations with the Division; or
- (III) the respondent contests the Division's order in a judicial proceeding.
- The continuing penalty period shall resume if the respondent terminates negotiations without reaching an agreement with the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the Division.
- (2) Pursuant to G.S. 113A-126(d)(1), penalties for minor development violations, including violations of permit conditions, shall be assessed as follows:
- (A) Minor development that could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee, plus investigative costs.
- (B) Minor development that could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee as set forth in Rule .0204 of this Subchapter, plus a penalty pursuant to Schedule B of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern (AEC) or coastal resource as listed within Schedule B of this Rule, the penalties for each affected AEC shall be combined. Any structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules.

SCHEDULE B
Penalties for Minor Development Permit Violations By Size of Violation

Size of Violation (sq. ft.)

| Area of Environmental Concern Affected | ≤ 100 | 101-500 | 501-1,000 | 1001-3000 | 3001-5000 | 5001-8000 | 8001-11,000 | 11,001-15,000 | 15,001-20,000 | 20,001-25,000 | >25,000 |
|--|-------|---------|-----------|-----------|-----------|-----------|-------------|---------------|---------------|---------------|---------|
| Coastal Shorelines | \$225 | \$250 | \$275 | \$325 | \$375 | \$450 | \$525 | \$625 | \$750 | \$875 | \$1,000 |
| ORW- Adjacent Areas | \$125 | \$150 | \$175 | \$225 | \$275 | \$350 | \$425 | \$375 | \$250 | \$125 | n/a |

| | | | | | | | | | | | |
|--|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|---------|
| Ocean Hazard System (1)(2) | \$225 | \$250 | \$275 | \$325 | \$375 | \$450 | \$525 | \$625 | \$750 | \$875 | \$1,000 |
| Primary or Frontal Dune | \$125 | \$150 | \$175 | \$225 | \$275 | \$350 | \$425 | \$375 | \$250 | \$125 | n/a |
| Public Water Supplies (3) | \$225 | \$250 | \$275 | \$325 | \$375 | \$450 | \$525 | \$625 | \$750 | \$875 | \$1,000 |
| Natural and Cultural Resource Areas (4) | \$225 | \$250 | \$275 | \$325 | \$375 | \$450 | \$525 | \$625 | \$750 | \$875 | \$1,000 |

- (1) Includes the Ocean Erodible, Inlet Hazard Area, and Unvegetated Beach Area.
- (2) If the AEC physically overlaps another AEC, use the greater penalty schedule.
- (3) Includes Small Surface Water Supply Watersheds, defined in 15A NCAC 07H .0404 and Public Water Supply Well Fields, defined in 15A NCAC 07H .0406.
- (4) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources as defined in 15A NCAC 07H .0505, .0506, .0509, and .0510.
- (C) Violations by public agencies , e.g., towns, counties, and State agencies, shall be handled by the local permit officer or one of the Commission's delegates within their respective jurisdictions except that in no case shall a local permit officer handle a violation committed by the local government they represent. Penalties shall be assessed in accordance with Parts (A) and (B) of this Subparagraph.
- (D) Willful and intentional violations. The penalty assessed under Parts (A) and (B) of this Subparagraph shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Subparagraph shall not exceed one thousand dollars (\$1,000.00) for each separate violation. For the purposes of G.S. 113A-126(d)(2), the following actions shall be considered willful and intentional:
- (i) the person received written instructions from the local permit officer or one of the Commission's delegates that a permit would be required for the development and subsequently undertook development without a permit;
 - (ii) the person received written instructions from the local permit officer or one of the Commission's delegates that the proposed development was not permissible under the Commission's rules, or received denial of a permit application for the proposed activity, and subsequently undertook the development without a permit;
 - (iii) the person committed previous violations of the Commission's rules; or
 - (iv) the person refused or failed to restore a damaged area as ordered by the local permit officer or one of the Commission's delegates.
- (E) Assessments against contractors. Any contractor, subcontractor, or person functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (D) of this Subparagraph and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.
- (F) Assessments of Continuing violations.
- (i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty.
 - (ii) Refusal or failure to restore a damaged area as directed in the restoration order shall be considered a continuing violation and shall be assessed an additional penalty. The amount of the penalty shall be determined according to Part (B) of this Subparagraph. The continuing penalty period shall be calculated from the date specified in the restoration order which accompanies the notice of violation

for the unauthorized activity to cease and restoration to be completed and run until:

- (I) the Division determines that the terms of the restoration order are satisfied;
- (II) the respondent enters into negotiations with the local permit officer or the Division; or
- (III) the respondent contests the local permit officer's or the Division's order in a judicial proceeding.

The continuing penalty period shall resume if the respondent terminates negotiations without reaching an agreement with the local permit officer or the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the local permit officer or the Division.

(g) Reports to the Commission. Action taken by the Director shall be reported to the Commission at the next regularly scheduled Commission meeting. Such reports shall include information on the following:

- (1) respondent(s) against whom penalties have been assessed;
- (2) respondent(s) who have paid a penalty, requested remission, or requested an administrative hearing;
- (3) respondent(s) who have failed to pay; and
- (4) cases referred to the Attorney General for collection.

(h) Settlements. The Commission hereby delegates to the Director the authority to enter into a settlement of an appeal of a civil penalty at any time prior to the issuance of a decision by the administrative law judge in a contested case under G.S. 150B-23, and shall not require the approval of the Commission. Any settlement agreement proposed subsequent to the issuance of a decision by the administrative law judge in a contested case under G.S. 150B-23 shall be submitted to the Commission for approval.

*History Note: Authority G.S. 113A-124; 113A-124(c)(8); 113A-126(d);
Eff. January 24, 1980;
ARRC Objection August 18, 1988;
Amended Eff. January 1, 1989; November 1, 1986; November 1, 1984;
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