



MEMORANDUM

To: Jeff Willis, Executive Director
Laura Miguel, Deputy Director

CC: Raymond C. Coia, CRMC Chair
Council members

From: Bruce Lofgren, Coastal Policy Analyst *BL*

Date: January 2, 2024

Re: Administrative Penalty Matrix – Proposed Rulemaking to Red Book (650-RICR-20-00-1) and Management Procedures (650-RICR-10-00-1)

RULEMAKING HISTORY:

The proposed regulation amendment was originally presented to the Planning and Procedures Committee on September 20, 2022. At the time, CRMC Staff proposed the following Administrative Penalty Matrix as a guidance document. CRMC initiated the rulemaking process by submitting the pre-draft review of the regulation and guidance document to the Office of Management and Budget (OMB). Upon submittal and review, OMB preferred that the guidance document be promulgated into a regulation. In response, CRMC staff incorporated the Administrative Penalty Matrix into regulations and presented the above referenced rulemaking to the Planning and Procedures Committee on September 26, 2023. The Planning and Procedures Committee unanimously directed CRMC staff to initiate rulemaking.

The Coastal Resources Management Council (CRMC) issued public notices dated October 26, 2023, that provided a 30-day comment period for the following draft chapters of Red Book (650-RICR-20-00-1) and Management Procedures (650-RICR-10-00-1):

- Red Book – Section 1.1.13: Violations and Enforcement Actions
- Management Procedures – Section 1.4.15: Administrative Penalty Matrix

In accordance with R.I. Gen. Laws § 42-35-2.8, the Council held a public hearing on the above referenced proposal on November 14, 2023. At the public hearing, CRMC Staff provided a brief presentation on the rulemaking, but no public comments were received.

CRMC Staff did receive one set of questions/comments via email from Save the Bay during the public comment period. CRMC Staff addressed the questions, and no further comments were received. The public comment period ended on November 26, 2023.

Based on the favorable review by the Planning and Procedures Subcommittee and comments/questions addressed during the public comment period, CRMC Staff recommends that the Council consider adopting the proposed rulemaking as presented. If adopted by the Council, CRMC Staff will initiate post adoption rulemaking procedures and submit the adopted rule to OMB for final approval.

PURPOSE:

The Coastal Resources Management Council has interpreted the policies, standards, and text of the Red Book (650-RICR-20-00-1) to include the following administrative penalty assessment for violations of the Rhode Island Coastal Resources Management Program within the state of the Rhode Island.

STATUTORY AUTHORITY:

Pursuant to the federal Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 through 1466) and R.I. Gen. Laws Chapter 46-23 the Coastal Resources Management Council is authorized to develop and adopt policies and regulations necessary to manage the coastal resources of the state and to provide for the integration and coordination of the protection of natural resources, the promotion of reasonable coastal-dependent economic growth, and the improved protection of life and property from coastal hazards.

PROPOSED REGULATION AMENDMENTS:

Proposed text for removal is shown in ~~red with strikethrough~~. The proposed new text is shown in [blue](#).

Red Book (650-RICR-20-00-1) – Amend § 1.1.13 as follows, to include, by reference, the administrative penalty matrix of the Management Procedures § 650-RICR-10-00-1 Section 1.14.15.

650-RICR-20-00-1 Red Book Proposed Changes

1.1.13 Violations and Enforcement Actions

- A. R.I. Gen. Laws Chapter 46-23 sets out the Council's authorities for enforcement.
- B. Whenever a member of the staff or a Coastal Resources Management Council Member witnesses a violation of the CRMC Plan or Assent, that individual is hereby authorized to

issue a warning to the person violating the Plan on a form approved by the CRMC and a report of that warning shall be delivered by the staff or Council member to the Executive Director upon issuance.

C. In determining the amount of each administrative penalty, assessed in accordance with authorities established in § 1.1.13(A) of this Part, the ~~Hearing Officer~~ Chairperson, Executive Director or ~~his~~ their designee shall consider the following:

1. The actual or potential impact on public health, safety and welfare and the environment of the failure to comply;
2. The actual potential damages suffered, and actual or potential costs incurred, by the Council, or by any other person;
3. Whether the person being assessed the administrative penalty took steps to prevent noncompliance, to promptly come into compliance and to remedy and mitigate whatever harm might have been done as a result of such noncompliance;
4. Whether the person being assessed the administrative penalty has previously failed to comply with any rule, regulation, order, permit, license or approval issued or adopted by the CRMC, or any law which the CRMC has the authority or the responsibility to enforce;
5. Making compliance less costly than noncompliance;
6. Deterring future noncompliance;
7. The amount necessary to eliminate the economic advantage of noncompliance including but not limited to the financial advantage acquired over competitors from the noncompliance;
8. Whether the failure to comply was intentional, willful or knowing and not the result of error;
9. Any amount specified by state and/or federal statute for a similar violation or failure to comply;
10. Any other factor(s) that may be relevant in determining the amount of a penalty, provided that the other factors shall be set forth in the written notice of assessment of the penalty; and
11. The public interest.

D. The Chairperson, the Executive Director or their designee shall consider the most recent version of the Administrative Penalty Matrix established in the Management Procedures § 650-RICR-10-00-1 Section 1.14.15.

Management Procedures (650-RICR-10-00-1) -- Amend § 1.1.4.15, as follows.

650-RICR-10-00-1 Management Procedures Proposed Changes

1.4.15 Administrative Penalty Matrix

A. The Administrative Penalty Matrix is used to capture information about a violation and establish a baseline penalty when assessing administrative fines as described in § 20-00-1.1.13 Violations and Enforcement Actions. The baseline penalty may be adjusted downward or upward based on special circumstances.

B. Special Circumstances. Enforcement staff recognizes unique or special circumstances that cannot be captured in the matrix. When used, the special circumstances must be specifically explained, and peer reviewed by CRMC enforcement staff.

Special circumstances which would warrant downward adjustment of the baseline penalty include, but are not limited to, good faith efforts to comply before or after the discovery of the violation, and violations caused by circumstances beyond the control of the responsible party which could not be prevented by due diligence.

Special circumstances which would warrant upward adjustment of the baseline penalty include, but are not limited to, economic or competitive advantage gained by the responsible party and deterrence of future noncompliance.

C. Baseline Penalty

1. Impacts to Public Health, Safety, Welfare, and the Environment

<u>POINT VALUE</u>	<u>AREA AFFECTED</u>	<u>EXTENT OF DEVIATION FROM REGS</u>	<u>ACTUAL AND POTENTIAL DAMAGES SUFFERED AND COSTS INCURRED</u>
<u>NONE-NEGLIGIBLE</u>			
<u>MODERATE</u>			
<u>HIGH</u>			

2. Aggravating Factors

<u>POINT VALUE</u>	<u>PERMIT/ENFORCEMENT HISTORY</u>	<u>PUBLIC INTEREST</u>	<u>INTENTIONALITY</u>
<u>NONE-NEGLIGIBLE</u>			
<u>MODERATE</u>			

<u>HIGH</u>			
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D. Ratings

None - Negligible: Either zero evidence or small enough evidence to be insignificant. 0-1 point.

Moderate: Enough evidence to be considered, but small enough to not pose a significant issue. 2- 3 points.

High: Significant evidence of impact. 4 - 5 points.

E. Penalty Assessment Based on Point Total

5 - 9 points = \$250 - \$2,000

10 - 14 points = \$2,000 - \$4,000

15 - 19 points = \$4,000 - \$6,000

20 - 24 points = \$6,000 - \$8,000

25 - 30 points = \$8,000 - \$10,000