

September 13, 2024

Jeffrey Willis, Executive Director
Rhode Island Coastal Resources Management Council
Stedman Government Center - Suite 3
4808 Tower Hill Road
Wakefield, RI 02879

Re: Proposed Rulemaking - Administrative Penalty Matrix

Thank you for the opportunity to review and comment on the CRMC's Administrative Penalty Matrix and associated Guidance Document, which includes amendments to the CRMC Management Procedures (650-RICR-10-00-1) at §1.1.4.15, and the Red Book (650-RICR-20-00-1) at §1.1.13. Save The Bay is committed to supporting CRMC's efforts to execute a strong enforcement program to protect coastal resources and to deter noncompliance. Inasmuch as administrative penalties are central to a strong enforcement program, we offer the following comments to the draft:

1. Under 1.1.13 (C)(3), we suggest that CRMC add language that clarifies that CRMC will, in fact, consider the length of time the violation remained in place. We support the current language that refers to whether the person being assessed took steps to mitigate the noncompliance, but suggest the following (new language underscored):

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, and the length of time during which the noncompliance was repeated or continued.

2. Under 1.1.13 (C)(5) and (7), it appears that these two subsections are inherently related and might benefit from being combined, with some additions to clarify what is meant by "*making compliance less costly than noncompliance*" and what else should be considered in considering the "*amount necessary to eliminate the economic advantage of noncompliance.*"

We strongly support the assessment of the economic advantage of noncompliance, but suggest the following for clarification (new language underscored):

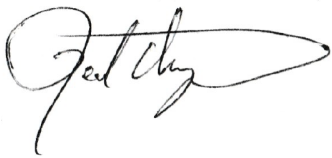
1.1.13 (C)(5)(*with language combined from (C)(7)*): Making compliance less costly than noncompliance by considering the amount necessary to eliminate the economic advantage of noncompliance, including but not limited to the financial advantage acquired over competitors from the noncompliance, as well as the cost of compliance, including the costs of engineering and other required studies needed to comply, and other costs that are delayed or avoided by the noncompliance.

We are strongly in favor of including clarifying language that accounts for delayed cost advantages that accrue to the violator, especially for violations that remain in place without immediate or timely restoration/remediation.

3. Special Circumstances: Save The Bay supports the application of special circumstances to adjust the baseline penalty where warranted. However, we suggest that CRMC explicitly add the length of time during which the noncompliance continued to the *“Examples of special circumstances which would warrant upward adjustment of the baseline penalty....”* This is an important factor that is not covered in the draft matrix under the point value assessment, and inclusion of this factor as an explicit example would confirm CRMC’s commitment to acknowledging the gross unfairness of a violator persistently maintaining a violation in place, without regard for the impacts to the coastal ecosystem. It is true that the current language includes the catchall “but not limited to” however, Save The Bay strongly urges CRMC to clearly call out the egregiousness of persistent states of noncompliance.

Thank you for your consideration of our comments, and we look forward to supporting a strong and robust enforcement of CRMC’s regulations for the protection of our coastal resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Jed Thorp", with a long, sweeping horizontal stroke extending to the right.

Jed Thorp,

Director of Advocacy

