



MEMORANDUM

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

CC: Raymond C. Coia, CRMC Chair
Council members

From: Bruce Lofgren, Coastal Policy Analyst

Date: October 1, 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 Administrative Penalty Matrix has been an ongoing initiative for CRMC since 2021. Originally, the Administrative Penalty Matrix was proposed as a guidance document. However, upon submittal as a guidance document, OMB preferred it to be promulgated into a regulation. In response, CRMC Staff incorporated the Administrative Penalty Matrix into regulations and initiated rulemaking in late 2023. The Council considered adoption of the regulation in January 2024, but voted to send the regulation back to CRMC Staff for revisions.

Specifically, the Council directed Staff to revise proposed Section 1.4.15 Administrative Penalty Matrix to define the six (6) categories in the matrix: “Area Affected”, “Extent of Deviation from Regulations”, “Actual and Potential Damages Suffered and Costs Incurred”, “Permit/Enforcement History”, “Public Interest”, and “Intentionality”. The Council also directed Staff to define the main categories of “Impacts to Public Health, Safety, Welfare, and the Environment” and “Aggravating Factors”.

CRMC Staff began reviewing similar regulations from other Coastal Zone Management programs and formulated the definitions that are now incorporated into the revised regulations.

On April 9, 2024, CRMC Staff presented the revised regulations to the Planning and Procedures Subcommittee and the Subcommittee unanimously directed CRMC staff to initiate rulemaking.

The Coastal Resources Management Council (CRMC) issued public notices of proposed rulemaking dated August 15, 2024, 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 August 27, 2024. At the public hearing, CRMC Staff provided a brief presentation on the rulemaking and pointed out a grammatical error in Section 1.1.13 of the Red Book. No public comments were received at the public hearing.

CRMC Staff did receive one set of comments during the public comment period via email from Save the Bay dated September 13, 2024. CRMC Staff have responded to the comments and do not recommend further edits to the proposed regulations. The public comment period ended on September 15, 2024.

Based on the favorable review by the Planning and Procedures Subcommittee and CRMC Staff's review of the comments received during the public comment period, CRMC Staff recommends that the Council consider adopting the proposed rulemaking with one edit to correct the grammatical error in Section 1.1.13 Violations and Enforcement Actions of the Red Book (highlighted in yellow below). 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~~, 1.4.15.

Management Procedures (650-RICR-10-00-1) -- Amend § 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. This adjustment factor is intended to provide CRMC Enforcement Staff with flexibility to make upward and downward adjustments to a calculated baseline penalty based upon unique circumstances that do not clearly fit within the matrix. When used, the special circumstances must be specifically explained, and peer reviewed by CRMC enforcement staff. Enforcement staff shall also consider Section 1.1.13 (C) 5, (C) 6, (C) 7, (C) 9, and (C)10 as described in §20-00-1.1.13 Violations and Enforcement Actions.

Examples of 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.

Examples of 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 As described in § 20-00-1.1.13 (C) 1 The actual or potential impact on public health, safety and welfare and the environment or failure to comply.

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

2. Aggravating Factors

Circumstances surrounding the violation that are sufficient to raise its severity and penalty to the aggravated version of the violation.

<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>			

D. Explanation of Categories

Area Affected: The extent of regulated area or areas damaged, impacted, and/or altered as a result of the violation.

Extent of Deviation from the Regulations: The degree to which the violator has deviated from the substance and intent of the applicable regulatory requirement(s).

Actual and Potential Damages Suffered and Costs Incurred: As described in § 20-00-1.1.13 (C) 2 as a result of the violation.

Permit/Enforcement History: Whether the violator and/or property(ies) in violation have a CRMC permit history and further described in § 20-00-1.1.13 (C) 4.

Public Interest: As described in § 20-00-1.1.13 (C) 11 and further described as the impact on the public's use and enjoyment of the states coastal resources as a result of the violation.

Intentionality: As described in § 20-00-1.1.13 (C) 8, whether the violation was the result failure to comply was willful or knowing and not the result of error.

E. 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.

F. 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