



Planning and Procedures Subcommittee

September 26, 2023

5:00 p.m.

Administration Building, Conference Room A
One Capitol Hill, Providence, RI

AGENDA

1. Call to Order
2. Approval of previous meeting minutes
3. **OLD BUSINESS/WORKS IN PROGRESS**
4. **PROPOSED PROGRAMMATIC REVISIONS**
5. **OTHER BUSINESS - *for Action***
 - A. Administrative Fines Program – Penalty Matrix
6. **NEW BUSINESS**
7. **STAFF REPORTS**
8. **ADJOURN**

ITEM 5.A

HISTORY:

The proposed regulation amendment was 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 have made the following recommendations to incorporate the Administrative Penalty Matrix into regulation.

Although the Administrative Penalty Matrix has not had any substantive change since the Planning and Procedures Committee's last review and approval, Staff considered the change from a guidance document to a regulation enough to warrant reconsideration of the Committee.

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.

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 § 10-00-1 Section 1.14.15.**

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.

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

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

2. Aggravating Factors

POINT VALUE	PERMIT/ENFORCEMENT HISTORY	PUBLIC INTEREST	INTENTIONALITY
NONE-NEGLIGIBLE			
MODERATE			
HIGH			

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

20 – 25 points = \$8,000 - \$10,000