

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2701

**DEADLINE FOR RECEIPT: Wednesday, June 5, 2019**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*On line 7, by "general permit pursuant to..." do you mean "general permit issued in accordance with"? I note that this appears to be the language used elsewhere in your Rules.*

*Are lines 9-10 intended to essentially be a definition of "marsh sills"? If so, I don't think that's clear. Please review and revise. Please also delete "generally" on line 9.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel

1 15A NCAC 07H .2701 is amended as published in 33:14 NCR 1493 as follows:

2  
3 **SECTION .2700 – GENERAL PERMIT FOR THE CONSTRUCTION OF ~~RIPRAP SILLS FOR~~**  
4 **~~WETLAND ENHANCEMENT IN ESTUARINE AND PUBLIC TRUST WATERS~~ MARSH SILLS**

5  
6 **15A NCAC 07H .2701 PURPOSE**

7 A general permit pursuant to this Section shall allow for the construction of ~~riprap marsh~~ sills for wetland enhancement  
8 and shoreline stabilization in estuarine and public trust waters as set out in Subchapter 15A NCAC 07J .1100 and  
9 according to the rules in this Section. Marsh sills are generally shore-parallel structures built in conjunction with  
10 existing, created, or restored wetlands. This general permit shall not apply within the Ocean Hazard System AECs or  
11 waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC  
12 that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower  
13 wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

14  
15 *History Note: Authority G.S. 113A-107; 113A-118.1;*  
16 *Temporary Adoption Eff. June 15, 2004;*  
17 *Eff. April 1, 2005;*  
18 *Temporary Amendment Eff. April 1, 2019;*  
19 *Amended Eff. July 1, 2019.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2704

**DEADLINE FOR RECEIPT: Wednesday, June 5, 2019**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*In (a), please consider deleting "the standards in"*

*In (b), by "insure", do you mean "ensure"?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel

1 15A NCAC 07H .2704 is amended as published in 33:14 NCR 1493 as follows:

2  
3 **15A NCAC 07H .2704 GENERAL CONDITIONS**

4 (a) Structures authorized by a permit issued pursuant to this Section shall be ~~riprap or stone~~ marsh sills conforming  
5 to the standards in these Rules.

6 (b) Individuals shall allow authorized representatives of the Department of ~~Environment and Natural Resources~~  
7 ~~(DENR)~~ Environmental Quality (DEQ) to make periodic inspections at any time deemed necessary in order to insure  
8 that the activity being performed under authority of this general permit is in accordance with the terms and conditions  
9 prescribed in these Rules.

10 (c) The placement of ~~riprap or stone~~ marsh sills authorized in these Rules shall not interfere with the established or  
11 traditional rights of navigation of the waters by the public.

12 (d) This permit shall not be applicable to proposed construction where the Department has determined, based on an  
13 initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are  
14 unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality,  
15 coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights.

16 (e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

17 (f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines as set  
18 out in ~~Subchapter~~ 15A NCAC 07H .0200, and local land use plans current at the time of authorization.

19  
20 *History Note:* Authority *G.S. 113A-107; 113A-118.1;*  
21 *Temporary Adoption Eff. June 15, 2004;*  
22 *Eff. April 1, 2005;*  
23 *Temporary Amendment Eff. April 1, 2019;*  
24 *Amended Eff. July 1, 2019.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2705

**DEADLINE FOR RECEIPT: Friday, March 15, 2019**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*In (a), please add a comma after "created."*

*In (c), please add commas before and after "including wetlands and tidal inundation"*

*In (c), within 90 days of notification of what? Noncompliance? If so, please say that.*

*In (f), please change "or" to a comma after "staggered" and "overlapped"*

*In (m), please delete or define "immediately" and "fully"*

*In (o), delete or define "proper"*

*In (o), please add comma before and after "other than... sill structure"*

*In (p), by "should be completed", do you mean "shall be completed"?*

*In (s), by "other materials that are approved..." do you mean masonry materials specifically or do you mean sill materials in general? If you mean that other sill materials in general may be approved, add a comma after concrete. Also, do you mean "other similar materials", as opposed to "approved" materials?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel

1 15 NCAC 15A NCAC 07H .2705 is amended as published in 33:14 NCR 1493-1495 as follows:

2  
3 **15A NCAC 07H .2705 SPECIFIC CONDITIONS**

4 (a) A general permit issued pursuant to this Section shall be applicable only for the construction of ~~riprap or stone~~  
5 marsh sill structures built in conjunction with existing, created or restored wetlands. Planted wetland vegetation shall  
6 consist only of native species.

7 ~~(b) This general permit shall not apply within the Ocean Hazard System Areas of Environmental Concern (AEC) or~~  
8 ~~waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC~~  
9 ~~that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower~~  
10 ~~wave energy, and lower erosion rates than in the adjoining Ocean Erodeable Area.~~

11 ~~(c) On shorelines where no fill is proposed, the~~ The landward edge of the sill shall be positioned no ~~more than 5~~  
12 ~~greater than 30~~ feet waterward of the ~~waterward depth contour of locally growing wetlands or to mid-tide depth~~  
13 ~~contour, of the normal high water or normal water level or five feet waterward of the existing wetlands, whichever~~  
14 ~~distance is greater. Where no wetlands exist, in no case shall the landward edge of the sill be positioned greater than~~  
15 ~~30 feet waterward of the mean high water or normal high water line.~~

16 ~~(d) On shorelines where fill is proposed, the landward edge of the sill shall be positioned no more than 30 feet~~  
17 ~~waterward of the existing mean high water or normal high water line.~~

18 ~~(e) (c) The permittee shall maintain the authorized sill and existing or planted wetlands including wetlands and tidal~~  
19 ~~inundation in conformance with the terms and conditions of this permit, or the remaining sill structures shall be~~  
20 ~~removed within 90 days of notification from the Division of Coastal Management.~~

21 ~~(f) (d) The height of sills shall not exceed six 12 inches above mean normal high water, normal water level, or the~~  
22 ~~height of the adjacent wetland substrate, whichever is greater. higher.~~

23 ~~(g) (e) Sill construction authorized by this permit shall be limited to a maximum length of 500 feet.~~

24 ~~(h) Sills shall be porous to allow water circulation through the structure.~~

25 ~~(i) (f) The sills shall have at least one five-foot drop-down or opening every 100 feet and may be staggered or~~  
26 ~~overlapped or left open as long as the five-foot drop-down or separation between sections is maintained. Overlapping~~  
27 ~~sections shall not overlap more than 10 feet. Deviation from these drop-down opening requirements shall be allowable~~  
28 ~~following coordination with the N.C. Division of Marine Fisheries and the National Marine Fisheries Service. N.C.~~  
29 ~~Division of Coastal Management.~~

30 ~~(j) (g) The riprap sill structure shall not exceed a slope of a one foot rise over a two foot horizontal distance and a~~  
31 ~~minimum slope of a one and a half foot rise over a one foot horizontal distance. one and a half foot horizontal distance~~  
32 ~~over a one foot vertical rise. The width of the structure on the bottom shall be no wider than 15 not exceed 12 feet.~~

33 ~~(k) For the purpose of protection of public trust rights, fill waterward of the existing mean high water line shall not~~  
34 ~~be placed higher than the mean high water elevation.~~

35 ~~(l) The permittee shall not claim title to any lands raised above the mean high or normal water levels as a result of~~  
36 ~~filling or accretion.~~

~~(m)~~ (h) For water bodies ~~more narrow~~ narrower than 150 feet, no portion of the structures shall not be positioned offshore more than one sixth (1/6) the width of the waterbody.

~~(n)~~ (i) The sill shall not be within a navigation channel or associated setbacks marked or maintained by a state or federal agency.

~~(o)~~ (j) The sill shall not interfere with leases or franchises for shellfish culture.

~~(p)~~ (k) All structures shall have a minimum setback distance of 15 feet between any parts of the structure and the adjacent property owner's riparian access corridor, unless either a signed waiver statement is obtained from the adjacent property owner or the portion of the structure within 15 feet of the adjacent riparian access corridor is located no more than 25 feet from the ~~mean normal~~ high or normal water level. The riparian access corridor line is determined by drawing a line parallel to the channel, then drawing a line perpendicular to the channel line that intersects with the shore at the point where the upland property line meets the water's ~~edge~~. edge, as defined in 15A NCAC 07H .1205(t). Additionally, the sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.

~~(q)~~ The sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.

~~(r)~~ (l) Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above ~~mean normal~~ high water ~~level~~. or normal water level and must be maintained for the life of the structure.

~~(s)~~ (m) If the crossing of wetlands with mechanized construction equipment is necessary, temporary construction mats shall be utilized for the areas to be crossed. The temporary mats shall be removed immediately upon completion of the construction of the ~~riprap sill~~ structure. Material used to construct the sill shall not be stockpiled on existing wetlands or in open water unless fully contained in a containment structure supported by construction mats.

~~(t)~~ (n) Sedimentation and erosion control measures shall be implemented to ensure that eroded materials do not enter adjacent wetlands or waters.

~~(u)~~ (o) No excavation or filling ~~of any native submerged aquatic vegetation other than that necessary for the construction and proper bedding of the sill structure~~ is authorized by this general permit.

(p) Sills shall not be constructed within any native submerged aquatic vegetation. If submerged aquatic vegetation is present within a project area, a submerged aquatic vegetation survey should be completed during the growing season of April 1 through September 30. All sills shall have a minimum setback of 10 feet from any native submerged aquatic vegetation.

(q) Sills shall not be constructed within any habitat that includes oyster reefs or shell banks. All sills shall have a minimum setback of 10 feet from any oysters, oyster beds, or shell banks.

~~(v)~~ (r) No excavation of the shallow water bottom or any wetland is authorized by this general permit.

~~(w)~~ No more than 100 square feet of wetlands may be filled as a result of the authorized activity.

~~(x)~~ Backfilling of sill structures may be utilized only for the purpose of creating a suitable substrate for the establishment or reestablishment of wetlands. Only clean sand fill material may be utilized.

~~(y)~~ (s) The ~~riprap sill~~ material shall consist of clean ~~rock~~ rock, marl, oyster shell, or masonry materials such as granite or broken ~~concrete~~. concrete or other materials that are approved by the N.C. Division of Coastal Management. ~~Riprap~~

1 Sill material shall be free of loose sediment or any ~~pollutant~~ pollutant, including exposed rebar. The ~~structures~~ sill  
2 material shall be of sufficient size and slope to prevent its movement from the ~~site~~ approved alignment by wave or  
3 current action.

4 ~~(z) If one or more contiguous acre of property is to be graded, excavated or filled, an erosion and sedimentation~~  
5 ~~control plan shall be filed with the Division of Energy, Mineral, and Land Resources, or appropriate government~~  
6 ~~having jurisdiction. The plan must be approved prior to commencing the land disturbing activity.~~

7 ~~(aa) In order to ensure that no adverse impacts occur to important fisheries resources, the Division of Marine Fisheries~~  
8 ~~shall review and concur with the location and design of the proposed project prior to the issuance of this general~~  
9 ~~permit.~~

10 ~~(bb) Prior to the issuance of this general permit, Division staff shall coordinate with the Department of~~  
11 ~~Administration's State Property Office to determine whether or not an easement shall be required for the proposed~~  
12 ~~activity.~~

13 ~~(cc) Following issuance of this general permit, the permittee shall contact the N.C. Division of Water Quality and the~~  
14 ~~U.S. Army Corps of Engineers to determine any additional permit requirements. Any such required permits, or a~~  
15 ~~certification from the appropriate agency(s) that no additional permits are required, shall be obtained and copies~~  
16 ~~provided to the Division of Coastal Management prior to the initiation of any development activities authorized by~~  
17 ~~this permit.~~

18  
19 *History Note: Authority G.S. 113A-107; 113A-118.1;*  
20 *Temporary Adoption Eff. June 15, 2004;*  
21 *Eff. April 1, 2005;*  
22 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f));*  
23 *Temporary Amendment Eff. April 1, 2019;*  
24 *Amended Eff. July 1, 2019.*



## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0409

**DEADLINE FOR RECEIPT: Wednesday, June 12, 2019**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*Is (a) necessary?*

*If (a) is necessary, what is meant by "these Rules"? Do you mean "this Rule"? If so, please also change "provide" to "provides"*

*In (a), what is your authority to allow the Director to assess penalties? 113A-126(d) says that penalties "may be assessed by the **Commission**." I see that 113A-124(c)(4) allows the Commission to delegate authority to conduct hearings, but I do not see similar language regarding penalties.*

*In (b), please change "herein" to "this Rule"*

*In (b)(2), please note that I have some concerns regarding the authority to delegate penalty responsibilities to the Director.*

*If you do have authority to delegate pursuant to statute, and you keep (b)(2), delete "in its stead pursuant to this Rule."*

*Since you have already referred back to the definitions in 113A-103 in (b), line 7, (b)(5) is unnecessary as it repeats information already in 113A-103. Please delete.*

*Given 113A-126(d)(1) and (2), is (c) necessary? It does not appear to be doing anything other than pointing to statute. Please consider deleting.*

*If you need (c), by "may", do you mean "shall"? If you mean "may", how will it be determined whether a penalty is assessed? What factors will be used in making this determination?*

*Given 113A-126(d)(4a), is (d) necessary? I understand that some of this Paragraph may be necessary to provide the factors that will be used in making this determination (lines 24-27), but lines 21-24 ("for a minor development violation... whichever is less") recite statute without providing any additional information or directives. Please delete this language. Also, please note that since 113A-104 establishes CRC within DEQ, it appears*

Amber May  
Commission Counsel

*as though the direction of staff could be internal management which is not subject to rulemaking.*

*To the extent that (d) is necessary, what is your authority to delegate this assessment to the Director/Division? 113A-123(d)(4a) says that the “**Commission** may also assess a person...” Please review and revise. A suggestion would be something like the following “In addition to a civil penalty, the Commission may assess costs of any investigation, inspection, or monitoring associated with assessment of the civil penalty. The amount of costs assessed shall be based upon factors including the amount of time spent on site visits, investigation, enforcement, interagency coordination, and for the monitoring of the restoration of the site.”*

*In (e), please note that 113A-126(d)(3) says that “the Commission shall notify a person...”*

*Alternatively, please delete the first sentence of (e) as it appears to relate to the internal management of notices.*

*In (e), regarding the requirements of the notice, I note that 113A-126(d)(3) appears to provide the requirements of the notice, such that lines 30-33 are unnecessary.*

*Also in (e), lines 33-34, (“The notice shall be delivered by registered or certified mail, return receipt requested”) appears to be unnecessary as 113A-122(d) says “all notices... shall be given by registered or certified mail...” I note that 113A-122(d) allows any notice of the Commission to also be provided “in accordance with the provisions of law covering civil actions in the superior courts of this State.”*

*In (e), do you mean something like “The Commission shall provide notice of violation to any person against whom a civil penalty has been assessed. Upon notification, the illegal activity shall be ceased and affected resources shall be restored in accordance with Rule .0410 of this Section.”*

*In (e) how is the Division to determine “the time by which the restoration shall be completed”? Rule .0410 does not set forth this information. Please consider deleting “as ordered by the Division” as again, this looks like internal management and the authority rests with the Commission.*

*Please make (f) and (g) complete sentences to provide some introductions and information to the association Subparagraphs.*

*What is your authority to delegate assessments to the Director in (f)(1)? 113A-126(d) gives this authority to the Commission. Alternatively, is (f)(1) necessary?*

*In (f)(2), is there a cross-reference for the notice of assessment?*

*In (f)(2), lines 1 and 3, by “may issue”, do you mean “shall issue”? I think the intent is “shall.” Please review. If you do in fact mean “may”, what factors will be used in making this determination?*

*Given 113A-126(d)(3) and 113A-122(d), is (f)(3) necessary? It essentially appears to recite statute.*

Amber May  
Commission Counsel

*Given 113A-126(d)(1), is (g)(1) necessary?*

*Given 113A-126(d)(2), is (g)(2) necessary?*

*Given 113A-126(d)(4), is (g)(3) necessary?*

*Given the above, please delete (g)(1) through (3).*

*In (g)(4), please change "Pursuant to Subparagraph (3) of this Paragraph," to "Pursuant to 113A-126(d)(1), penalties for major development violations, including violations of permit conditions, shall be assessed as follows:"*

*In (g)(4), as noted in the previous suggestion, please change "in accordance with the following criteria" to "as follows" As written, it appears as though (g)(4)(A) through (F) are going to set forth factors, but the factors are set forth in statute, so I don't think that the intent here.*

*In (g)(4)(A) and (B), change "which" to "that" in "which could"*

*In (g)(4)(A), what is the permit application fee? Is there a cross-reference available? Here, do you mean something like "the CAMA permit application fee as set forth in .0204 of this Subchapter"?*

*Just to be clear, if the penalty calculated in accordance with the formula set forth in (g)(4)(B) exceeds the statutory maximum, you all only assess the statutory maximum?*

*In (g)(4), please provide some sort of introductory language to the table. Perhaps add it as a separate Paragraph or Subparagraph and say "Schedule A, penalties for major development violations shall be determined by the size of the violation in square feet as follows" As written, the table appears to come out of nowhere and it's unclear how it fits in the Rule. Please note that this may require you to renumber your other Subparagraphs.*

*In (g)(4)(C), please verify the cross-reference to Parts (4)(A) and (B) in light of any changes you make as a result of these technical change requests.*

*Given 113A-126(d)(2), the majority of (g)(4)(D) appears to be unnecessary as it simply recites statute. Is the intent here to say what will constitute willful and intentional violations? If so, please consider revising this to say something like " For purposes of 113A-126(d)(2), the following actions shall be considered willful and intentional:"*

*In (g)(4)(D), please verify the cross-reference to Parts (4)(A) and (B) in light of any changes you make as a result of these technical change requests. Also, to the extent that this is necessary, please provide the statutory citation of 113A-126(d)(2), as opposed to the cross-reference within the Rule.*

*Please delete the "or" at the end of (g)(4)(D)(i) and (ii). Please also begin (g)(4)(D)(i) through (iv) with lower case letters.*

*What is the intent of (g)(4)(D)(iii)? Specifically, what is meant by "previous violations"? Do they have to be the same violations or is the intent here that it be any violation (no matter how minor or unrelated)?*

Amber May  
Commission Counsel

*Given 113A-126(a), the second sentence of (g)(4)(D)(iv) appears to be unnecessary. Please delete "If necessary, the Commission or Division shall seek a court order to require restoration." Further 113A-126(a) and (b) appear to give this authority to the Secretary or local official, not the Commission.*

*In (g)(4)(E), what is your authority to issue penalties against both the contractor and landowner? Are you relying upon 113A-126 and the Commission's authority to issue penalties against "persons"? Would you end up issuing penalties against two different "persons" for the same violation?*

*Assuming that you do have authority, is all of (g)(4)(E) necessary? In (e), you allow violations to be issued to "any person engaged in a violation which constitutes a violation for which a civil penalty may be assessed." Wouldn't that include contractors? I understand the need for lines 21-24, but I'm not sure that lines 18-21 are necessary.*

*In (g)(4)(E), delete "or" in between "contractor" and "subcontractor" and add commas before and after "subcontractor", so that it reads "Any contractor, subcontractor, or person or functioning as a contractor..."*

*In (g)(4)(E), what does it mean to be "functioning as a contractor"?*

*In (g)(4)(F), please make this a complete sentence and provide some introduction to the Parts.*

*Given 113A-126(d)(2), is (g)(4)(F)(i) necessary? It appears to simply recite statute.*

*What is the overall intent of (g)(4)(F)(ii)? I'm not sure that I understand what is going on here. What is the "additional penalty"? Is the intent to get to 113A-126(2) and define what days will be counted as "separate days"?*

*In (g)(4)(F)(ii), as ordered by whom? Do you mean the notice of the Commission as referred elsewhere in this Rule? Do you mean the Court in accordance with 113A-126(a)? If it is the Court, what is your authority? 113A-126(c) appears to leave this to the Court's discretion. Please review and revise.*

*Please end (g)(4)(F)(ii)(I) and (II) with semi-colons, instead of commas, and delete the "or" at the end of (g)(4)(F)(ii)(I).*

*In (g)(4)(F)(ii)(I), given my authority concerns elsewhere, is this the Division's order, or the Commission's order? Also, what is meant by "satisfied"? Does this just mean that it meets the conditions set forth in the order (or notice, whatever is meant)? If so, please say that.*

*In (g)(4)(F)(ii)(II), delete or define "good faith"*

*In (g)(4)(F)(ii)(III), what is meant by "a justiciable issue of law or fact therein." I have concerns with this language. Here, do you mean something like "the respondent contests the order in accordance with 113A-123 and 150B-23"?*

*In (g)(5), I don't understand the cross-reference to Subparagraph (3). Here, do you mean "In accordance with 113A-126(d)"?*

Amber May  
Commission Counsel

*In (g)(5), please change “Pursuant to Subparagraph (3) of this Paragraph,” to “Pursuant to 113A-126(d)(1), penalties for minor development violations, including violations of permit conditions, shall be assessed as follows:”*

*In (g)(5), as noted in the previous suggestion, please change “in accordance with the following criteria” to “as follows” As written, it appears as though (g)(5)(A) through (F) are going to set forth factors, but the factors are set forth in statute, so I don’t think that the intent here.*

*In (g)(5)(A) and (B), change “which” to “that” in “which could”*

*In (g)(5)(A), what is the permit application fee? Is there a cross-reference available? Here, do you mean something like “the CAMA permit application fee as set forth in .0204 of this Subchapter”?*

*Just to be clear, if the penalty calculated in accordance with the formula set forth in (g)(5)(B) exceeds the statutory maximum, you all only asses the statutory maximum?*

*In (g)(5), please provide some sort of introductory language to the table. Perhaps add it as a separate Paragraph or Subparagraph and say “Schedule A, penalties for major development violations shall be determined by the size of the violation in square feet as follows” As written, the table appears to come out of nowhere and it’s unclear how it fits in the Rule. Please note that this may require you to renumber your other Subparagraphs.*

*In (g)(5)(C), please verify the cross-reference to Parts (4)(A) and (B) in light of any changes you make as a result of these technical change requests.*

*Given 113A-126(d)(2), the majority of (g)(5)(D) appears to be unnecessary as it simply recites statute. Is the intent here to say what will constitute willful and intentional violations? If so, please consider revising this to say something like “ For purposes of 113A-126(d)(2), the following actions shall be considered willful and intentional.”*

*In (g)(5)(D), please verify the cross-reference to Parts (4)(A) and (B) in light of any changes you make as a result of these technical change requests. Also, to the extent that this is necessary, please provide the statutory citation of 113A-126(d)(2), as opposed to the cross-reference within the Rule.*

*Please delete the “or” at the end of (g)(5)(D)(i) and (ii). Please also begin (g)(5)(D)(i) through (iv) with lower case letters.*

*What is the intent of (g)(5)(D)(iii)? Specifically, what is meant by “previous violations”? Do they have to be the same violations or is the intent here that it be any violation (no matter how minor or unrelated)?*

*In (g)(5)(E), what is your authority to issue penalties against both the contractor and landowner? Are you relying upon 113A-126 and the Commission’s authority to issue penalties against “persons”? Would you end up issuing penalties against two different “persons” for the same violation?*

*Assuming that you do have authority, is all of (g)(5)(E) necessary? In (e), you allow violations to be issued to “any person engaged in a violation which constitutes a violation for which a civil penalty may be assessed.” Wouldn’t that include contractors? Please see my notes for (g)(4)(E).*

*In (g)(5)(E), delete “or” in between “contractor” and “subcontractor and add commas before and after “subcontractor”, so that it reads “Any contractor, subcontractor, or person or functioning as a contractor...”*

*In (g)(5)(E), what does it mean to be “functioning as a contractor”?*

*Given 113A-126(a), the second sentence of (g)(5)(D)(iv) appears to be unnecessary. Please delete “If necessary, the Commission or Division shall seek a court order to require restoration.” Further 113A-126(a) and (b) appear to give this authority to the Secretary or local official, not the Commission.*

*In (g)(5)(F), please make this a complete sentence and provide some introduction to the Parts.*

*Given 113A-126(d)(2), is (g)(5)(F)(i) necessary? It appears to simply recite statute.*

*What is the overall intent of (g)(5)(F)(ii)? I’m not sure that I understand what is going on here. What is the “additional penalty”? Is the intent to get to 113A-126(2) and define what days will be counted as “separate days”?*

*In (g)(5)(F)(ii), as ordered by whom? Do you mean the notice of the Commission as referred elsewhere in this Rule? Do you mean the Court in accordance with 113A-126(a)? If it is the Court, what is your authority? 113A-126(c) appears to leave this to the Court’s discretion. Please review and revise.*

*Please end (g)(5)(F)(ii)(I) and (II) with semi-colons, instead of commas, and delete the “or” at the end of (g)(5)(F)(ii)(I).*

*In (g)(5)(F)(ii)(I), given my authority concerns elsewhere, is this the delegate’s order, or the Commission’s order? Also, what is meant by “satisfied”? Does this just mean that it meets the conditions set forth in the order (or notice, whatever is meant)? If so, please say that.*

*In (g)(5)(F)(ii)(II), delete or define “good faith”*

*In (g)(5)(F)(ii)(III), what is meant by “a justiciable issue of law or fact therein.” I have concerns with this language. Here, do you mean something like “the respondent contests the order in accordance with 113A-123 and 150B-23”?*

*What is the overall intent of (h)? Please review and revise this Paragraph in light of Article 3 of 150B and the changes that have been made regarding the finality of decisions of an ALJ. Please note that this may be applicable to other Paragraphs in this Rule. If you all do have authority and are not subject to Article 3 of 150B, please provide your specific authority for that exemption.*

*Given 113A-126(d)(3), is (i) necessary? It appears to simply recite statute.*

*If (i) is necessary, what is your authority to delegate this responsibility to the Director? 113A-126(d)(3) says that the **"Commission shall refer..."***

*Given the above comments and the ability to delegate civil penalty assessments to the Director, what is your authority for (j)?*

*If you do have authority for (j), what is meant by the "next meeting"? Is this the next regularly scheduled meeting following the action taken?*

*In (k), what is meant by "an administrative contested case hearing"? Is this pursuant to 113A-126(3) after a person files a contested case under 150B-23? Please review and clarify.*

*In (k), what is your authority to say that "such settlements... shall not be considered a final Commission decision for purposes of G.S. 113A-123"? While I understand that this may be legally accurate, it appears to be a legal conclusion for which you don't have authority to determine.*

*What is the intent of (l)? Practically speaking, would there be a settlement agreement after the Commission makes a final decision? Is this once a case reaches the level of an ALJ? Again, please review this in light of Article 3 of 150B.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 07J .0409 is amended **with changes** as published in 33:14 NCR 1495-1500:

2  
3 **15A NCAC 07J .0409 CIVIL PENALTIES**

4 (a) Purpose and Scope. These Rules provide the procedures and standards governing the assessment, remission,  
5 settlement and appeal of civil penalties assessed by the Coastal Resources Commission and the Director pursuant to  
6 G.S. 113A-126(d).

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

8 (1) "Act" means the Coastal Area Management Act of 1974, G.S. 113A-100 through 134, plus  
9 amendments.

10 (2) "Delegate" means the Director or other employees of the Division of Coastal Management, or local  
11 permit officers to whom the Commission has delegated authority to act in its stead pursuant to this  
12 Rule.

13 (3) "Director" means the Director, Division of Coastal Management.

14 (4) "Respondent" means the person to whom a notice of violation has been issued or against whom a  
15 penalty has been assessed.

16 (5) "Person" is defined in the Coastal Area Management Act, G.S. 113A-103(9).

17 (c) Civil penalties may be assessed against any person who commits a violation as provided for in G.S.  
18 113A-126(d)(1) and (2).

19 (d) Investigative costs. Pursuant to G.S. 113A-126(d)(4a) the Commission or Director may also assess a respondent  
20 for the costs incurred by the Division for investigation, inspection, and monitoring associated with assessment the  
21 civil penalty. Investigative costs shall be in addition to any civil penalty assessed. For a minor development violation,  
22 investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars  
23 (\$1,000), whichever is less. For a major development violation, investigative costs shall not exceed one-half of the  
24 amount of the civil penalty assessed or two thousand five hundred dollars (\$2,500), whichever is less. The Division  
25 shall determine the amount of investigative costs to assess based upon factors including the amount of staff time  
26 required for site visits, investigation, enforcement action, interagency coordination, and for monitoring restoration of  
27 the site.

28 (e) Notice of Violation. The Commission hereby authorizes employees of the Division of Coastal Management to  
29 issue in the name of the Commission notices of violation to any person engaged in an activity which constitutes a  
30 violation for which a civil penalty may be assessed. Such notices shall set forth the nature of the alleged violation,  
31 shall order that the illegal activity be ceased and affected resources be restored in accordance with ~~15A NCAC 07J~~  
32 ~~.0410.~~ Rule .0410 of this Section. The notice shall specify the time by which the restoration shall be completed as  
33 ordered by the Division. The notice shall be delivered ~~personally or~~ by registered or certified mail, return receipt  
34 requested.

35 (f) Civil Penalty Assessment.

36 (1) The Commission hereby delegates to the Director the authority to assess civil penalties according  
37 to the procedures set forth in Paragraph (g) of this Rule.



1 (2) ~~The Director shall~~ If restoration of affected resources is not required, the Director may issue a notice  
2 of assessment within ~~30~~ 90 days from the date of the Notice of Violation. If restoration of affected  
3 resources is required, the Director may issue a Notice of Assessment within 60 days after the  
4 Division determines that restoration of the adversely impacted resources is ~~complete~~. complete or  
5 due date of restoration completion.

6 (3) The notice of assessment shall specify the reason for assessment, how the assessment was  
7 calculated, when and where payment shall be made, and shall inform the respondent of the right to  
8 appeal the assessment by filing a petition for a contested case hearing with the Office of  
9 Administrative Hearings pursuant to G.S. 150B-23. The notice shall be delivered ~~personally or~~ by  
10 registered or certified mail, return receipt requested.

11 (g) Amount of Assessment.

12 (1) Civil penalties shall not exceed the maximum amounts established by G.S. 113A-126(d).

13 (2) If any respondent willfully continues to violate by action or inaction any rule or order of the  
14 Commission after the date specified in a notice of violation, each day the violation continues or is  
15 repeated shall be considered a separate violation as provided in G.S. 113A-126(d)(2).

16 (3) In determining the amount of the penalty, the Commission or Director shall consider the factors  
17 contained in G.S. 113A-126(d)(4).

18 (4) Pursuant to Subparagraph ~~(g)(3) of this Rule, (3) of this Paragraph,~~ penalties for major development  
19 violations, including violations of permit conditions, shall be assessed in accordance with the  
20 following criteria.

21 (A) Major development which could have been permitted under the Commission's rules at the  
22 time the notice of violation is issued shall be assessed a penalty equal to two times the  
23 relevant CAMA permit application fee, plus investigative costs.

24 (B) Major development which could not have been permitted under the Commission's rules at  
25 the time the notice of violation is issued shall be assessed an amount equal to the relevant  
26 CAMA permit application fee, plus a penalty pursuant to Schedule A of this Rule, plus  
27 investigative costs. If a violation affects more than one area of environmental concern  
28 (AEC) or coastal resource as listed within Schedule A of this Rule, the penalties for each  
29 affected AEC shall be combined. Any structure or part of a structure that is constructed in  
30 violation of existing Commission rules shall be removed or modified as necessary to bring  
31 the structure into compliance with the Commission's rules.

32  
33 SCHEDULE A

34 Major Development Violations

35  
36 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
<b>ESTUARINE WATERS OR PUBLIC TRUST AREAS (1)</b>	\$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
<b>OCEAN HAZARD SYSTEM (3)(4)</b>	\$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
<b>PUBLIC WATER SUPPLIES (5)</b>	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000
<b>NATURAL AND CULTURAL RESOURCE AREAS (6)</b>	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000

- 1 (1) Includes the Atlantic Ocean from the normal high water mark to three miles offshore.
- 2 (2) Wetlands that are jurisdictional by the Federal Clean Water Act.
- 3 (3) If the AEC physically overlaps another AEC, use the greater penalty schedule.
- 4 (4) Includes the Ocean Erodible, ~~High Hazard Flood Area~~, Inlet Hazard Area, and Unvegetated Beach
- 5 Area.
- 6 (5) Includes Small Surface Water Supply, Watershed and Public Water Supply Well Fields.
- 7 (6) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique
- 8 Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal
- 9 Historical Architectural Resources.
- 10 (C) Assessments for violations by public agencies (i.e. towns, counties and state agencies) shall
- 11 be determined in accordance with Parts ~~(g)(4)(A) and (B) of this Rule~~, 4(A) and (B) of this
- 12 Paragraph.

- 1 (D) Willful and intentional violations. The penalty assessed ~~under Parts (g)(4)(A) and (B) of~~  
2 ~~this Rule~~ in accordance with Parts (4)(A) and (B) of this Paragraph. shall be doubled for  
3 willful and intentional violations except that the doubled penalties assessed under this  
4 Subparagraph shall not exceed ten thousand dollars (\$10,000) or be less than two thousand  
5 dollars (\$2,000) for each separate violation. A violation shall be considered to be willful  
6 and intentional when:
- 7 (i) The person received written instructions from one of the Commission's delegates  
8 that a permit would be required for the development and subsequently undertook  
9 development without a permit; or
- 10 (ii) The person received written instructions from one of the Commission's delegates  
11 that the proposed development was not permissible under the Commission's rules,  
12 or received denial of a permit application for the proposed activity, and  
13 subsequently undertook the development without a permit; or
- 14 (iii) The person committed previous violations of the Commission's rules; or
- 15 (iv) The person refused or failed to restore a damaged area as ordered by one of the  
16 Commission's delegates. If necessary, the Commission or Division shall seek a  
17 court order to require restoration.
- 18 (E) Assessments against contractors. Any contractor or subcontractor or person or group  
19 functioning as a contractor shall be subject to a notice of violation and assessment of a civil  
20 penalty in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to  
21 that assessed against the landowner. When a penalty is being doubled pursuant to ~~Part~~  
22 ~~(g)(4)(D)~~ Part (D) of this Subparagraph and the element of willfulness is present only on  
23 the part of the contractor, the landowner shall be assessed the standard penalty and the  
24 contractor shall be assessed the doubled penalty.
- 25 (F) Continuing violations.
- 26 (i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the  
27 date specified in the notice of violation for the unauthorized activity to cease or  
28 restoration to be completed shall be considered a separate violation and shall be  
29 assessed an additional penalty.
- 30 (ii) Refusal or failure to restore a damaged area as ordered shall be considered a  
31 continuing violation and shall be assessed an additional penalty. When resources  
32 continue to be affected by the violation, the amount of the penalty shall be  
33 determined according to ~~Part (g)(4)(B) of this Rule.~~ Part (B) of this Subparagraph.  
34 The continuing penalty period shall be calculated from the date specified in the  
35 notice of violation for the unauthorized activity to cease or restoration to be  
36 completed and run until:
- 37 (I) the Division's order is satisfied, or

- (II) the respondent enters into good faith negotiations with the Division, or
- (III) the respondent contests the Division's order in a judicial proceeding by raising a justiciable issue of law or fact therein.

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.

(5) Pursuant to Subparagraph ~~(g)(3) of this Rule~~, (3) of this Paragraph, civil penalties for minor development violations, including violations of permit conditions, shall be assessed in accordance with the following criteria:

- (A) Minor development which 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 which 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 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

##### Minor Development Violations

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
<b>OCEAN HAZARD SYSTEM (1)(2)</b>	\$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
<b>PUBLIC WATER SUPPLIES (3)</b>	\$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, ~~High Hazard Flood Area~~, 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, Watershed and Public Water Supply Well Fields.

(4) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.

(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 ~~(g)(5)(A) and (B) of this Rule~~. (A) and (B) of this Subparagraph.

(D) Willful and intentional violations. The penalty assessed under Parts ~~(g)(5)(A) and (B) of this Rule~~ (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. A violation shall be considered to be willful and intentional when:

(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; or

(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; or

(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. If necessary, a court order shall be sought to require restoration.

(E) Assessments against contractors. Any contractor or subcontractor or person or group 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 ~~(g)(5)(D)~~ (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) 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 ordered shall be considered a continuing violation and shall be assessed an additional penalty. The amount of the penalty shall be determined according to Part ~~(e)(5)(B) of this Rule. (B) of this Subparagraph.~~ The continuing penalty period shall be calculated from the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed and run until:

(I) the Commission delegate's order is satisfied, or

(II) the respondent enters into good faith 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 by raising a justiciable issue of law or fact therein.

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.

(h) Hearings and Final Assessment. Final decisions in contested case hearings concerning assessments shall be made by the Commission. The final decision shall be based on evidence in the official record of the contested case hearing, the administrative law judge's recommended decision, any exceptions filed by the parties and oral arguments. Oral arguments shall be limited to the facts in the official record.

(i) Referral. If any civil penalty as finally assessed is not paid, the Director on behalf of the Commission shall request the Attorney General to commence an action to recover the amount of the assessment.

(j) Reports to the Commission. Action taken by the Director shall be reported to the Commission at the next 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.

(k) Settlements. The Commission hereby delegates to the Director the authority to enter into a settlement of a civil penalty appeal at any time prior to decision in an administrative contested case hearing. Such settlements shall not

1 require the approval of the Commission and shall not be considered a final Commission decision for purposes of G.S.  
2 113A-123.

3 (l) Any settlement agreement proposed subsequent to a final Commission decision in the contested case shall be  
4 submitted to the Commission for approval.

5  
6 *History Note:* Authority G.S. 113A-124; 113A-126(d);  
7 Eff. January 24, 1980;  
8 ARRC Objection August 18, 1988;  
9 Amended Eff. January 1, 1989; November 1, 1986; November 1, 1984;  
10 ARRC Objection Lodged Eff. January 18, 1991;  
11 Amended Eff. July 1, 2019; February 1, 2008; July 1, 1991; June 1, 1991.