

PROPOSED RULES

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alarm Systems Licensing Board intends to amend the rule cited as 14B NCAC 17 .0203.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.ncdps.gov/dps-services/permits-licenses/alarm-system-licensing-board>

Proposed Effective Date: May 1, 2019

Public Hearing:

Date: January 30, 2019

Time: 2:00 p.m.

Location: Alarm Systems Licensing Board, 3101 Industrial Dr., Suite 104, Raleigh, NC 27609

Reason for Proposed Action: The Board is fee funded and is not supported by the General Fund of the State of North Carolina. The Board has seen a fund balance decrease of approximately \$50,000 in the last year; therefore, it is necessary to increase the licensing fee in order to cover costs. The Board is increasing the licensing application fee from three hundred seventy-five dollars (\$375.00) to five hundred dollars (\$500.00), an amount allowed pursuant to N.C.G.S. 74D-7. The Board has approximately 400 licenses; therefore, the \$125 increase to the licensing fee will result in approximately \$50,000 increased revenue.

Comments may be submitted to: Phil Stephenson, Field Services Supervisor, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609, phone (919) 788-5320, fax (919) 715-0370, email Phillip.Stephenson@ncdps.gov

Comment period ends: March 18, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 17 - ALARM SYSTEMS LICENSING BOARD

SECTION .0200 – PROVISIONS FOR LICENSEES

14B NCAC 17 .0203 FEES FOR LICENSES

- (a) Application license fees shall be as follows:
- (1) one hundred fifty dollars (\$150.00) non-refundable initial application fee;
 - (2) ~~three hundred seventy five dollar (\$375.00)~~ five hundred dollar (\$500.00) biennial fee for a new or renewal license;
 - (3) one hundred fifty dollars (\$150.00) branch office license fee;
 - (4) one hundred dollars (\$100.00) late renewal fee to be paid in addition to the renewal fee if the license has not been renewed on or before the expiration date.
- (b) Fees shall be paid as follows:
- (1) if the application is submitted by hand delivery, U.S. Mail, or delivery services, payment shall be by check or money order made payable to the Alarm Systems Licensing Board; or
 - (2) if the application if submitted online, payment shall be by credit card, e-check or other form of electronic funds.

Authority G.S. 74D-7.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .2701, .2704, .2705 and 15A NCAC 07J .0409.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://deq.nc.gov/permits-regulations/rules-regulations/proposed-main>

Proposed Effective Date: June 1, 2019

Public Hearing:

Date: February 28, 2019

Time: 1:15 p.m.

Location: Carteret County Historical Society Museum, 1008 Arendell Street, Morehead City, NC 28557

Reason for Proposed Action:

15A NCAC 07H .2701, .2704, .2705: Session Law 2018-136 Section 5.13 directs the CRC to adopt rules to revise the Commission's general permit for the construction of riprap sills for wetland enhancement in estuarine and public trust waters in order to make the general permit consistent with the US Army Corps of Engineers regional general permit for living shorelines.

15A NCAC 07J .0409: These amendments address procedural matters, clarifications and inconsistencies with other CRC development rules.

Comments may be submitted to: Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557

Comment period ends: March 18, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected 15A NCAC 07H .2701, .2704, .2705
Environmental permitting of DOT affected Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (>=\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4 15A NCAC 07J .0409

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .2700 - GENERAL PERMIT FOR THE CONSTRUCTION OF RIPRAP SILLS FOR WETLAND

ENHANCEMENT IN ESTUARINE AND PUBLIC TRUST WATERS MARSH SILLS

15A NCAC 07H .2701 PURPOSE

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

Authority G.S. 113A-107; 113A-118.1.

15A NCAC 07H .2704 GENERAL CONDITIONS

- (a) Structures authorized by a permit issued pursuant to this Section shall be riprap or stone marsh sills conforming to the standards in these Rules.
(b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources (DENR) Environmental Quality (DEQ) to make periodic inspections at any time deemed necessary in order to insure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed in these Rules.
(c) The placement of riprap or stone marsh sills authorized in these Rules shall not interfere with the established or traditional rights of navigation of the waters by the public.
(d) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights.
(e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.
(f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines as set out in Subchapter 15A NCAC 07H .0200, and local land use plans current at the time of authorization.

Authority G.S. 113A-107; 113A-118.1.

15A NCAC 07H .2705 SPECIFIC CONDITIONS

- (a) A general permit issued pursuant to this Section shall be applicable only for the construction of riprap or stone marsh sill structures built in conjunction with existing, created or restored wetlands. Planted wetland vegetation shall consist only of native species.
(b) This general permit shall not apply within the Ocean Hazard System Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the

~~presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodeable Area.~~

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

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

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

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

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

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

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

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

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

~~(l) The permittee shall not claim title to any lands raised above the mean high or normal water levels as a result of 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 riparians 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 Sill material shall be free of loose sediment or any pollutant. Pollutant, including exposed rebar. The structures sill material shall be of sufficient size and slope to prevent its movement from the site approved alignment by wave or current action.

~~(z) If one or more contiguous acre of property is to be graded, excavated or filled, an erosion and sedimentation control plan shall be filed with the Division of Energy, Mineral, and Land~~

~~Resources, or appropriate government having jurisdiction. The plan must be approved prior to commencing the land disturbing activity.~~

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

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

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

Authority G.S. 113A-107; 113A-118.1.

**SUBCHAPTER 07J - PROCEDURES FOR PROCESSING
AND ENFORCEMENT OF MAJOR AND MINOR
DEVELOPMENT PERMITS, VARIANCE REQUESTS,
APPEALS FROM PERMIT DECISIONS,
DECLARATORY RULINGS, AND STATIC LINE
EXCEPTIONS**

**SECTION .0400 - FINAL APPROVAL AND
ENFORCEMENT**

15A NCAC 07J .0409 CIVIL PENALTIES

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

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

- (1) "Act" means the Coastal Area Management Act of 1974, G.S. 113A-100 through 134, plus amendments.
- (2) "Delegate" means the Director or other employees of the Division of Coastal Management, or local permit officers to whom the Commission has delegated authority to act in its stead pursuant to this Rule.
- (3) "Director" means the Director, Division of Coastal Management.
- (4) "Respondent" means the person to whom a notice of violation has been issued or against whom a penalty has been assessed.
- (5) "Person" is defined in the Coastal Area Management Act, G.S. 113A-103(9).

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

(d) Investigative costs. Pursuant to G.S. 113A-126(d)(4a) the Commission or Director may also assess a respondent for the costs

incurred by the Division for investigation, inspection, and monitoring associated with assessment the civil penalty. Investigative costs shall be in addition to any civil penalty assessed. For a minor development violation, investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars (\$1,000), whichever is less. For a major development violation, investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars (\$2,500), whichever is less. The Division shall determine the amount of investigative costs to assess based upon factors including the amount of staff time required for site visits, investigation, enforcement action, interagency coordination, and for monitoring restoration of the site.

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

(f) Civil Penalty Assessment.

- (1) The Commission hereby delegates to the Director the authority to assess civil penalties according to the procedures set forth in Paragraph (g) of this Rule.
- (2) ~~The Director shall~~ If restoration of affected resources is not required, the Director may issue a notice of assessment within 30 90 days from the date of the Notice of Violation. If restoration of affected resources is required, the Director may issue a Notice of Assessment within 60 days after the Division determines that restoration of the adversely impacted resources is complete. complete or due date of restoration completion.
- (3) The notice of assessment shall specify the reason for assessment, how the assessment was calculated, when and where payment shall be made, and shall inform the respondent of the right to appeal the assessment by filing a petition for a contested case hearing with the Office of Administrative Hearings pursuant to G.S. 150B-23. The notice shall be delivered personally or by registered or certified mail, return receipt requested.

(g) Amount of Assessment.

- (1) Civil penalties shall not exceed the maximum amounts established by G.S. 113A-126(d).
- (2) If any respondent willfully continues to violate by action or inaction any rule or order of the Commission after the date specified in a notice of violation, each day the violation continues or is repeated shall be considered a separate violation as provided in G.S. 113A-126(d)(2).

PROPOSED RULES

- (3) In determining the amount of the penalty, the Commission or Director shall consider the factors contained in G.S. 113A-126(d)(4).
- (4) Pursuant to Subparagraph ~~(g)(3)~~ of this Rule, (3) of this Paragraph, penalties for major development violations, including violations of permit conditions, shall be assessed in accordance with the following criteria.
 - (A) Major 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) Major 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 A 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 A 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 A
Major 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
ESTUARINE WATERS OR PUBLIC TRUST AREAS (1)	\$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
OCEAN HAZARD SYSTEM (3)(4)	\$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
PUBLIC WATER SUPPLIES (5)	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000

PROPOSED RULES

NATURAL AND CULTURAL RESOURCE AREAS (6)	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000
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- (1) Includes the Atlantic Ocean from the normal high water mark to three miles offshore.
 - (2) Wetlands that are jurisdictional by the Federal Clean Water Act.
 - (3) If the AEC physically overlaps another AEC, use the greater penalty schedule.
 - (4) Includes the Ocean Erodible, ~~High Hazard Flood Area~~, Inlet Hazard Area, and Unvegetated Beach Area.
 - (5) Includes Small Surface Water Supply, Watershed and Public Water Supply Well Fields.
 - (6) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.
 - (C) Assessments for violations by public agencies (i.e. towns, counties and state agencies) shall be determined in accordance with Parts (g)(4)(A) and (B) of this Rule.
 - (D) Willful and intentional violations. The penalty assessed under Parts (g)(4)(A) and (B) of this Rule shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Subparagraph shall not exceed ten thousand dollars (\$10,000) or be less than two thousand dollars (\$2,000) for each separate violation. A violation shall be considered to be willful and intentional when:
 - (i) The person received written instructions from 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 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 one of the Commission's delegates. If necessary, the Commission or Division shall seek a court order 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)(4)(D)~~ Part (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 or 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. When resources continue to be affected by the violation, the amount of the penalty shall be determined according to ~~Part (g)(4)(B) of this Rule.~~ Part (B) of this Subparagraph. The continuing penalty period shall be calculated from the

PROPOSED RULES

date specified in the notice of violation for the unauthorized activity to cease or restoration to be completed and run until:

- (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, 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
OCEAN HAZARD SYSTEM (1)(2)	\$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
PUBLIC WATER SUPPLIES (3)	\$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 ~~(g)(5)(B)~~ (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.

Authority G.S. 113A-124; 113A-126(d).

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

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

TITLE 20 – DEPARTMENT OF STATE TREASURER

Notice is hereby given in accordance with G.S. 150B-21.2 that the Supplemental Retirement Board of Trustees and the Department of State Treasurer intends to adopt the rules cited as 20 NCAC 11 .0101 and .0102.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.nctreasurer.com/inside-the-department/opengovernment/proposed-rules/pages/default.aspx>

Proposed Effective Date: June 1, 2019

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than January 30, 2019 to Laura Rowe, Rulemaking Coordinator, Department of State Treasurer, 3200 Atlantic Avenue, Raleigh, NC 27604.

Reason for Proposed Action: The Supplemental Retirement Board and the Department of State Treasurer do not receive any appropriations to operate the NC 401(k) Plan, the NC 457 Plan, or the NC 403(b) Program. Instead, to the knowledge of the Department, the operational expenses of the Board and the Department have historically been funded through an administrative fee charged to participants who opt to enroll in the Supplemental Retirement Plans. The Board and the Department will use the administrative fee receipts to fund the administration of the Plans, including Departmental personnel costs and investment consulting and auditing fees.

Comments may be submitted to: Laura Rowe, 3200 Atlantic Avenue, Raleigh, NC 27604, email dst.ncac@nctreasurer.com

Comment period ends: March 18, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

State funds affected

