

11/14/2022

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Julie Coco, PE, State Sediment Engineer
DEMLR
1612 Mail Service Center
Raleigh, NC 27699-1612

Re: Remission Request of Civil Penalty Assessed to Wayfarers Cove Marina and
Beach, LLC
DEMLR Case No. LQS -2022-001

Dear Ms. Coco:

Please consider this letter as a formal remission request of the above referenced DEMLR Case. Enclosed is the WAIVER OF RIGHT TO AN ADMINISTRATIVE HEARING AND STIPULATION OF FACTS along with a JUSTIFICATION FOR REMISSION REQUEST form and attachments.

At the time of writing this letter and submitting this request, a call has been placed to Ms. Carolyn McLain, Assistant Attorney General in the hopes of entering into informal settlement negotiations regarding this assessment but we have not received a call back. It is not and never has been our intentions to violate the Sedimentation Pollution Control Act of 1973 at the Wayfarers Cove Marina and Beach. We believe the unique conditions and circumstances of 2021 and 2022 associated with the COVID outbreak and its subsequent ramifications limited the availability of engineers and surveyors required to produce the necessary revisions to the existing Erosion and Sedimentation Control Plan dated 5/4/2021 and modified on 5/19/2021. Further explanation is attached to the JUSTIFICATION FOR REMISSION REQUEST form.

I thank you for your consideration of this request.

Sincerely,



Carlos Melo

Member Manager

Wayfarers Cove Marina & Beach, LLC

JUSTIFICATION FOR REMISSION REQUEST

DEMLR Case Number: LQS -2022-001

County: PAMLICO

Assessed Party: WAYFARERS COVE MARINA AND BEACH, LLC

Project No. (If applicable): PAMLI-2021-001

Amount Assessed: \$25,000.00

Please use this form when requesting remission of this civil penalty. You must also complete the "Waiver of Right to an Administrative Hearing, and Stipulation of Facts" form to request remission of this civil penalty. You should attach any documents that you believe support your request and are necessary for the Commission to consider in evaluating your request for remission. Please be aware that a request for remission is limited to consideration of the factors listed below. Requesting remission is not the proper procedure for contesting whether the violation(s) occurred or the accuracy of any of the factual statements contained in the civil penalty assessment document. Pursuant to N.C.G.S. § 113A-64.2(b), the following factors shall be considered in determining whether a civil penalty remission request will be approved. Please check each factor that you believe applies to your case and provide a detailed explanation, including copies of supporting documents, as to why the factor applies (attach additional pages as needed).

- (a) one or more of the civil penalty assessment factors in N.C.G.S. 113A-64(a)(3) were wrongfully applied to the detriment of the petitioner (please refer to the "Assessment Factors" summary attached):
- (b) the violator promptly abated continuing environmental damage resulting from the violation (i.e., explain the steps that you took to correct the violation and prevent future occurrences):
- (c) the violation was inadvertent or a result of an accident (i.e., explain why the violation was unavoidable or something you could not prevent or prepare for; proof is recommended):
- (d) the violator had not been assessed civil penalties for any previous violations:
- (e) payment of the civil penalty will prevent payment for the remaining necessary remedial actions or would otherwise create a significant financial hardship (i.e., explain how payment of the civil penalty will prevent you from performing the activities necessary to achieve compliance):
- (f) the assessed property tax valuation of the violator's property upon which the violation occurred, excluding the value of any structures located on the property.

Please note that you have the burden of providing information concerning the financial impact of a civil penalty and the burden of showing any financial hardship.

EXPLANATION (attach additional pages as necessary):

JUSTIFICATION FOR REMISSION REQUEST

DEMLR Case Number -2022-001

County: PAMLICO

Assessed Party: WAYFARERS COVE MARINA AND BEACH, LLC

Project No. PAMLI-2021-001

Amount Assessed: \$25,000.00

EXPLANATION

(c) the violation was inadvertent or as a result of an accident;

Wayfarers Cove Marina and Beach, LLC does not argue with the Findings of Facts but wishes to emphasize that there was an erosion and control plan submitted on 9/3/2020 with modifications on 11/16/2020 and 5/19/2021. Therefore, there was never any intent to circumvent the Sedimentation Pollution Control Act of 1973. The harsh reality was that after several years of work, the engineering firm doing the work informed Wayfarers Cove that they were retiring from the business and could no longer assist in completion of the project. As a result, engineering oversight was absent and the erosion and sedimentation control measures installation process was affected. After being notified by the consulting engineer that they could no longer provide the needed services, management began searching for a replacement firm. However, with the Covid issues still in the forefront of our daily lives and creating a major impact on the economy and associated services, local engineering firms were dramatically impacted and short staffed. At least four engineering/surveying firms were contacted and were either too backlogged to take on a new client, did not have the staff to undertake the project, or they too had decided to retire and/or get out of the business. These firm names are available if needed.

Fortunately, John G. Thomas, PE of Thomas Engineering, PA out of New Bern agreed last month to undertake the work and has started conducting baseline work for the project with emphasis on revising the Erosion and Sedimentation Control Plan and addressing all issues associated with the Notice of violation.

I must emphasize, the violations described were never intentional and were inadvertent because of the lack of engineering guidance and assistance. Management never imagined hiring an engineering firm would be so difficult and take so long. As a preventive measure, construction was stopped shortly after the CNOV was received. It should be noted that in accordance with the permits, silt fencing and sedimentation curtains were installed along the perimeter of the marina basin and disturbed areas were seeded.

(d) the violator had not been assessed civil penalties for any previous violations;

The prior record of Wayfarers Cove and Marina Beach, LLC reflects its compliance with the Sedimentation Pollution Control act of 1973, all ordinances, rules, and orders.

STATE OF NORTH CAROLINA

SEDIMENTATION POLLUTION
CONTROL COMMISSION

COUNTY OF PAMLICO

IN THE MATTER OF ASSESSMENT)
OF CIVIL PENALTIES AGAINST)
WAYFARERS COVE MARINA AND BEACH, LLC)

**WAIVER OF RIGHT TO AN
ADMINISTRATIVE HEARING AND
STIPULATION OF FACTS**

CASE NO. LQS -2022-001

Having been assessed civil penalties totaling \$25,000.00 for violation(s) as set forth in the assessment document of the Division of Energy, Mineral and Land Resources dated 10/12/2022 the undersigned, desiring to seek remission of the civil penalties, does hereby waive the right to an administrative hearing in the above-stated matter and does stipulate that the facts are as alleged in the assessment document.

The undersigned further understands that all evidence presented in support of remission of this civil penalty must be submitted to the Division of Energy, Mineral and Land Resources within thirty (30) calendar days of receipt of the civil penalty assessment. No new evidence in support of a remission request will be allowed after thirty (30) calendar days from the receipt of the civil penalty assessment.

This the 14th day of November, 2022

Carlos M. Melo
NAME (printed)
Carlos M. Melo
SIGNATURE

ADDRESS

Wayfarers Cove Marina
Attn: Mr. Carlos M. Melo
1107 Bennett Road
Arapahoe, NC 28510

TELEPHONE

559-217-7070