

ROY COOPER
Governor
ELIZABETH S. BISER
Secretary
BRIAN WRENN
Director



10/12/2022

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

7019 1120 0001 4878 5491

WAYFARERS COVE MARINA AND BEACH, LLC
Attn: Mr. Carlos M. Melo, Member Manager
1107 Bennett Road
Arapahoe, NC 28510

Re: Civil Penalty Assessment for Violations of the Sedimentation Pollution Control Act of 1973, N.C. General Statute 113A-50 et seq.
PAMLICO County
LQS -2022-001

Dear Mr. Melo:

Pursuant to North Carolina Administrative Code 15A 4A.0001 et seq. and the above-referenced Act, this letter is notice of a civil penalty assessed by the Department of Environmental Quality (**DEQ**), formerly Department of Environment and Natural Resources. The civil penalty assessment document is attached.

Within thirty (30) days from the date of receipt of this letter, you must do one of the following:

- (1) Pay the civil penalty assessment; or
- (2) File a written petition for a contested case hearing in the Office of Administrative Hearings (**OAH**).

Alternatively, if you choose to stipulate to the facts on which this assessment was based, but wish to request remission of the civil penalty, then within thirty (30) days from the date of receipt of this letter, you must do the following:

- (3) File a written request for a remission of the civil penalty.

Pursuant to N.C. General Statute 150B-22, informal settlement negotiations may be initiated at any time. To negotiate a settlement of this assessment, please contact Carolyn McLain, Assistant Attorney General, who may be reached by telephone at (919) 716-6600. Settlement offers do not extend the 30-day deadlines for payment, filing of a contested case petition, or requesting a remission.



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Mr. Carlos M. Melo

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Additional information about your options is provided below.

PAYMENT

To pay the penalty, send your payment by check or money order made payable to the North Carolina Department of Environmental Quality (or **NCDEQ**) to Carolyn McLain, Assistant Attorney General, North Carolina Department of Justice, Environmental Division, 9001 Mail Service Center, Raleigh, North Carolina 27699-9001. The Attorney General's Office will represent **NCDEQ** in the resolution of this civil penalty assessment.

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. General Statutes 150B-23. File the original petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephoning (919) 431-3000.

You must serve **DEQ** by mailing a copy of the petition to:

Mr. Bill Lane
Registered Agent and General Counsel
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

REMISSION

A request for remission is limited to consideration of the six factors listed below and is not the proper procedure for contesting the accuracy of any of the statements contained in the assessment document.

Because a remission request forecloses the option of an administrative hearing, such a request will not proceed without a waiver of your right to an administrative hearing and a stipulation that there are no factual or legal issues in dispute.

You must execute and return to this office the attached "Waiver of Right to an Administrative Hearing and Stipulation of Facts" and the attached "Justification of Remission Request" which should provide additional information on the following factors which shall be considered in determining whether a civil penalty remission request will be approved:

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- 1) One or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.
- 2) The petitioner promptly abated continuing environmental damage resulting from the violation.
- 3) The violation was inadvertent or a result of an accident.
- 4) The petitioner had been assessed civil penalties for any previous violations.
- 5) Payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
- 6) The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.

You have the burden of providing information concerning the financial impact of a civil penalty and the burden of showing any financial hardship.

If you file a request for remission of the civil penalties, you must submit the required information within 30 days of receipt of this notice. Submit this information to the attention of:

*If sending by First Class Mail via
the US Postal Service:*

*If sending via delivery service
(e.g. UPS, FedEx):*

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

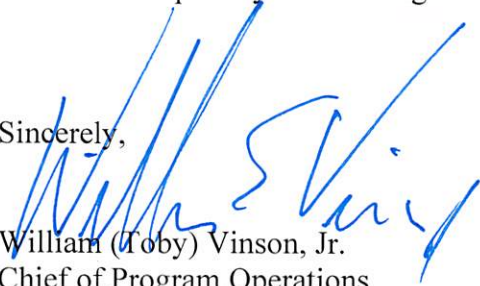
Julie Coco, PE, State Sediment Engineer
DEMLR
512 N. Salisbury Street
Raleigh, NC 27604

Payment of this penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in this penalty assessment are continuing in nature, **DEQ** reserves the right to assess additional civil penalties in the future, or take other enforcement action against you.

Please also be aware that because you have never previously been assessed a civil penalty for violations of the Sedimentation Pollution Control Act, should you abate continuing environmental damage resulting from these violations within 180 days of the date of the Notice of Violations (no later than 9/21/2022, then the maximum cumulative civil penalty assessed against you for these violations cannot exceed **\$25,000.00**.

Your attention to this matter is appreciated.

Sincerely,


William (Toby) Vinson, Jr.
Chief of Program Operations
DEMLR

cc: Julie Coco, State Sedimentation Engineer & Carolyn McLain, Assistant Attorney General

Land Resources (hereinafter "DEMLR"), North Carolina Department of Environmental Quality (hereinafter "DEQ"), inspected the subject property and determined that a land-disturbing activity had occurred on the site in violation of the Sedimentation Pollution Control Act (hereinafter "SPCA") of 1973 (G.S. 113A-50, et seq.).

- F. The land-disturbing activity was conducted for commercial purposes and covered approximately 11.4 (7.44 permitted and 4.01 unpermitted) acres.
- G. On 3/25/2022, the DEMLR Regional Engineer sent a Notice of Violation (hereinafter "Notice") to WAYFARERS COVE MARINA AND BEACH, LLC by certified mail, return receipt requested, which was received on 3/30/2022, and which cited violations of the SPCA. A copy of the Notice is attached hereto and incorporated herein by reference. The Notice required that the corrective measures stated therein be completed within 15 days of receipt of the Notice.
- H. A subsequent inspection on 4/14/2022 revealed that the site continued to be in violation of the SPCA for one or more of the reasons previously cited in the Notice.
- I. Sedimentation damage was noted during inspections conducted on the following dates: 7/13/2020, 12/18/2020, 2/9/2021, and 4/14/2022. The sediment damage in the wetlands noted on 2/9/2021 has yet to be removed.
- J. On 4/25/2022, the DEMLR Regional Engineer sent a Notice of Continuing Violation to WAYFARERS COVE MARINA AND BEACH, LLC by certified mail, return receipt requested.

II. CONCLUSIONS OF LAW

- A. A civil penalty may be assessed against WAYFARERS COVE MARINA AND BEACH, LLC, pursuant to North Carolina General Statute 113A-64(a) for the violations committed on the subject property.
- B. From 3/25/2022 through 8/26/2022, violations of one or more of the requirements of the SPCA or the rules adopted thereunder existed on the subject property as follows:
 - 1. N.C.G.S. 113A-57(5) was violated for failure to conduct a land-disturbing activity in accordance with the approved erosion and sedimentation control plan.
 - 2. N.C.G.S. 133A-54.1(b) and 15A N.C.A.C 4B. 0118(a) were violated for failure to submit a revised plan.
 - 3. 15A NCAC 04B .0113 was violated for failure to install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of the SPCA or rules adopted thereunder.

III. DECISIONS

- A. Pursuant to N.C.G.S. 113A-64(a) and the authority delegated to me by the Secretary of the Department, I, William (Toby) Vinson, Jr., Chief of Program Operations, DEMLR, do hereby assess a civil penalty against WAYFARERS COVE MARINA AND BEACH, LLC in the amount of \$330.00 per day for the 154 day period beginning 3/25/2022, the day the violation was discovered and ending on 8/26/2022. The total penalty amount is calculated at \$50,820.00. Because you have not previously been assessed a civil penalty for violations of the Sedimentation Pollution Control Act, should you abate continuing environmental damage resulting from these violations within 180 days of the date of the Notice of Violations (no later than 9/21/2022, then the maximum cumulative civil penalty assessed against you for these violations cannot exceed **\$25,000.00**.
- B. In determining the amount of this penalty, I have considered the criteria in N.C.G.S. 113A-64(a)(3).
- C. I hereby put WAYFARERS COVE MARINA AND BEACH, LLC on notice that I reserve the right to initiate further enforcement action for any violations occurring after 8/26/2022.

10/12/2022
Date



William (Toby) Vinson, Jr.
Chief of Program Operations
Division of Energy, Mineral, and Land Resources

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):

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 _____ day of _____, 20_____

NAME (printed)

SIGNATURE

ADDRESS

TELEPHONE

NORTH CAROLINA DIVISION OF ENERGY, MINERAL AND LAND RESOURCES

Violator: WAYFARERS COVE MARINA AND BEACH, LLC
Project Name: Wayfarers Cove Marina Improvements
County: PAMLICO **Case Number:** LQS -2022-001
Project Number: PAMLI-2021-001

ASSESSMENT FACTORS

G.S. 113A-64(a)(3) & 57(5) - Civil Penalty Assessment Factors

- 1) The degree and extent of harm caused by the violation. This is related to the type of violation, and is affected by the length of time and extent of any off-site damage which may have resulted from the violation(s);**
Severe The violations were (b) failure to follow approved plan, (c) failure to submit a revised plan, and (j) failure to install and maintain measures.
- 2) The cost of rectifying the damage;**
Unknown
- 3) The amount of money saved by noncompliance. This includes the estimated cost of installing and/or maintaining erosion and sediment control measures which would have otherwise been addressed in accordance with the approved plan or a required revised plan, or if no plan is required, in accordance with the measures required to protect all public and private property from erosion and sedimentation damage;**
Unknown
- 4) Whether the violation(s) was committed willfully or intentionally. This considers the violator's prior knowledge of the violation(s), whether the violation(s) was inadvertent, and the timeliness of the violator's response in abating the violation(s);**
Yes
- 5) The prior record of the violator in complying or failing to comply with this Article, or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government; and**
None on record
- 6) Whether the land-disturbing activity was conducted in accordance with the approved plan or with the SPCA.**
The plan was not followed.

10/12/2022
Date

William (Toby) Vinson, Jr.
Chief of Program Operations
Division of Energy, Mineral, and Land Resources

ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

BRIAN WRENN
Director



NORTH CAROLINA
Environmental Quality

3/25/2022

**NOTICE OF VIOLATIONS OF THE
SEDIMENTATION POLLUTION CONTROL ACT**

AND

**GENERAL PERMIT - NCG 010000
TO DISCHARGE STORMWATER UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
FOR
CONSTRUCTION ACTIVITIES**

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

7021 0350 0000 4420 0491

Carlos M. Melo, Registered Agent
Wayfarers Cove Marina and Beach, LLC
1107 Bennett Road
Arapahoe, NC 28510

File
Copy

RE: Project Name: Wayfarers Cove Marina Improvements
Project ID: PAMLI-2021-001
County: Pamlico
Compliance Deadlines: 15 days from receipt for SPCA violations
15 days from receipt by certified mail for
Construction Stormwater Permit NCG 010000
violations

Dear Mr. Melo:

On March 11, 2022, personnel of this office inspected a project located on Bennett Road, Arapahoe in Pamlico County, North Carolina. This inspection was performed to determine compliance with the North Carolina Sedimentation Pollution Control Act (SPCA) of 1973 and General Permit - NCG 010000 to Discharge Stormwater Under the National Pollutant Discharge Elimination System for Construction Activities (Construction Stormwater Permit NCG 010000).



The purpose of this letter is to inform you that this activity was found to be in violation of the SPCA, G.S. 113A-50 to 66, Title 15A, North Carolina Administrative Code (NCAC), Chapter 4 and Construction Stormwater Permit NCG 010000. If you feel that you are not responsible for the following violations, please notify this office immediately.

The violations of the SPCA that were found are:

1. Failure to conduct a land-disturbing activity in accordance with the approved erosion and sedimentation control plan. G.S. 113A-57(5).

Silt fence has not been installed in all of the required places. Check dams have not been installed. Area labeled as undisturbed on the plans, have been disturbed. Work has been done outside the limits of disturbance (LOD).

2. Failure to file an acceptable, revised plan after being notified of the need to do so. G.S. 113A-54.1 (b) and 15A NCAC 4B .0118 (a).

A revised plan was never submitted for new disturbed areas outside of the previously permitted area. Notification was sent on September 17, 2021 in a certified inspection report. The last approved permit was issued on May 19, 2021.

3. Failure to install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of the Act, and rules adopted thereunder, during or after the development of a site. 15 NCAC 4B .0113.

Silt fence has not been installed in all of the required places. Check dams and a construction entrance have not been installed.

The violations of the Construction Stormwater Permit NCG 010000 that were found are:

1. Failure to develop or adhere to the erosion and sedimentation control plan. The approved erosion and sedimentation control plan is considered a condition of Construction Stormwater Permit NCG 010000, Part I

Silt fence has not been installed in all of the required places. Check dams have not been installed. Area labeled as undisturbed on the plans, have been disturbed. Work has been done outside the limits of disturbance (LOD).

Notice of Violations
Carlos M. Melo
03/25/2022
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2. Failure to install and maintain BMPs and control measures, NCG 010000 Part II, Section G.2-3

The permittee shall install and maintain all temporary and permanent E&SC measures as required by this permit and the approved E&SC plan. If self-inspections required by this permit identify a need for maintenance of control measures, modifications or additions to control measures, or corrective actions to control sediment or other pollutants, these actions shall be performed as soon as possible considering adverse weather and site conditions.

Silt fence has not been installed in all of the required places. Check dams and a construction entrance have not been installed.

To correct these violations, you must:

Bring the site into compliance as soon as possible by installing and repairing all erosion and sediment control measures as stated in the plans approved by the North Carolina Department of Environmental Quality (NCDEQ), Division of Energy Mineral and Land Resources (DEMLR). Also, you must file for a revised permit which includes all disturbed areas not included in the permit issued on May 19, 2021 by the NCDEQ.

Notify this office once non-compliance issues are resolved.

SPCA Violations

The violations of the SPCA cited herein may be referred to the Division of Energy, Mineral and Land Resources for appropriate enforcement action, including civil penalty assessments for an initial one-day violation and/or a continuing violation. The penalty for an initial one-day violation of the SPCA may be assessed in an amount not to exceed \$5,000.00. The Division of Energy, Mineral and Land Resources is not required to provide a time period for compliance before assessing an initial penalty for the violations of the SPCA cited herein. Please be advised that a civil penalty may be assessed for the initial day of violations of the SPCA regardless of whether the violations are corrected within the time period set out below.

In addition, if the violations of the SPCA cited herein are not corrected within 15 calendar days of receipt of this Notice, this office may request that the Division take appropriate legal action against you for continuing violations pursuant to NCGS 113A-61.1 and 113A-64. A penalty may be assessed from the date of the violation of the SPCA, pursuant to NCGS 113A-64(a)(1), and for each day of a continuing violation of the SPCA in an amount not to exceed \$5,000.00 per day.

Notice of Violations
Carlos M. Melo
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Construction Stormwater Permit NCG 010000 Violations

The violations of the Construction Stormwater Permit NCG 010000 cited herein may be referred to the Division of Energy, Mineral and Land Resources for appropriate enforcement action, including civil penalty assessments for a continuing violation. This Notice serves as a letter of proposed civil penalty assessment. You have 15 calendar days from receipt of this Notice by certified mail to cease the violations listed above, and to submit in writing reasons why the civil penalty should not be assessed.

Accordingly, you are directed to respond to this letter in writing within seven (7) calendar days of receipt of this Notice by certified mail. Your response should be sent to this regional office at the letterhead address and include the following:

1. The date by which the corrective actions listed above have been or will be completed.
2. Rainfall data and self-inspection or self-monitoring records from 1/1/2022 to 3/28/2022
3. A plan of action to prevent future violations.
4. A plan for restoration of sedimentation damage.
5. Reasons why a civil penalty should not be assessed.

Pursuant to G.S. 143-215.6A, these violations and any future violations are subject to a civil penalty assessment of up to a maximum of \$25,000.00 per day for each violation. Your above-mentioned response to this correspondence, the degree and extent of harm to the environment and the length of time and gravity of the violation(s) will be considered in any civil penalty assessment process that may occur.

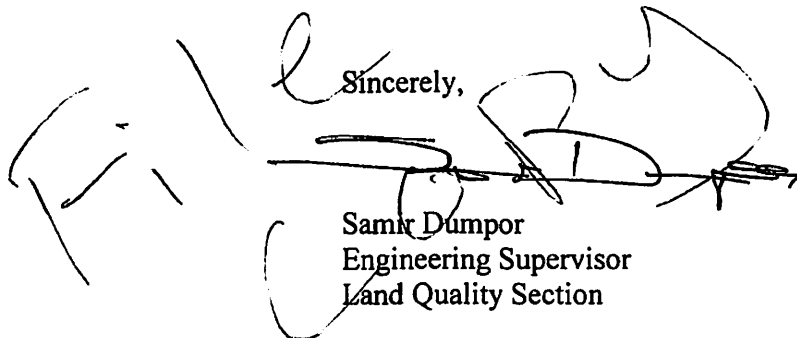
Please be advised that any new land-disturbing activity associated with this project should not begin until the area presently disturbed is brought into compliance with the SPCA and Construction Stormwater Permit NCG 010000. When corrective actions are complete, you should notify this office so that work can be inspected. You should not assume that the project is in compliance with the SPCA and Construction Stormwater Permit NCG 010000 until we have notified you. After installation, all erosion control measures must be maintained in proper working order until the site is completely stabilized.

We solicit your cooperation, and would like to avoid taking further enforcement action. At the same time, it is your responsibility to understand and comply with the requirements of the SPCA and Construction Stormwater Permit NCG 010000. The relevant statute and administrative rules can be found at the Division's website at <http://deq.nc.gov/E&SC>. The permit can be found at the

Notice of Violations
Carlos M. Melo
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Division's website at <http://deq.nc.gov/ncg01>. Should you have questions concerning this notice or the requirements of the SPCA and Construction Stormwater Permit NCG 010000 please contact either Scott Graboski, Environmental Specialist, at Scott.Graboski@ncdenr.gov or me, Samir Dumpor, Engineering Supervisor at 252.946.6481 or Samir.Dumpor@ncdenr.gov at your earliest convenience.

Sincerely,



Samir Dumpor
Engineering Supervisor
Land Quality Section

Enclosures: Sedimentation Inspection Report

cc: DEMLR Files
David May, Regional Water Quality Supervisor

