

SECTION .0400 - FINAL APPROVAL AND ENFORCEMENT

15A NCAC 07J .0401 FINAL DECISION

15A NCAC 07J .0402 CRITERIA FOR GRANT OR DENIAL OF PERMIT APPLICATIONS

History Note: Authority G.S. 113-229; 113A-118(c); 113A-120(a)(b), and (c); 113A-122(b); 113A-122(b)(10); 113A-122(c); 113A-124;
Eff. March 15, 1978;
Amended Eff. January 1, 1992; July 1, 1989; October 1, 1988; September 1, 1988; November 1, 1984; November 1, 1983; August 1, 1983;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.

15A NCAC 07J .0403 DEVELOPMENT PERIOD/COMMENCEMENT/CONTINUATION

- (a) New dredge and fill permits and CAMA permits, excepting beach bulldozing when authorized through issuance of a CAMA minor permit, shall expire on December 31 of the third year following the year of permit issuance.
- (b) Pursuant to Subparagraph (a) of this Rule, a minor permit authorizing beach bulldozing shall expire 30 days from the date of permit issuance when issued to a property owner(s). Following permit expiration, the applicant is entitled to request an extension in accordance with Rule .0404(a) of this Section.
- (c) Development After Permit Expiration Illegal. Any development done after permit expiration shall be considered unpermitted and shall constitute a violation of G.S. 113A-118 or G.S. 113-229. Any development to be done after permit expiration shall require either a new permit, or renewal of the original permit according to 15A NCAC 7J .0404 with the exception of Paragraph (e) of this Rule.
- (d) Commencement of Development in Ocean Hazard AEC. No development shall begin until the oceanfront setback requirement can be established. When the possessor of a permit or a ruling of exception is ready to begin construction, he shall arrange a meeting with the appropriate permitting authority at the site to determine the oceanfront setback. This setback determination shall replace the one done at the time the permit was processed and approved and construction must begin within a period of 60 days from the date of that meeting. In the case of a major shoreline change within that period a new setback determination will be required before construction begins. Upon completion of the measurement, the permitting authority will issue a written statement to the permittee certifying the same.
- (e) Continuation of Development in the Ocean Hazard AEC. Once development has begun under proper authorization, development in the Ocean Hazard AEC may continue beyond the authorized development period if, in the opinion of the permitting authority, substantial progress has been made and is continuing according to customary and usual building standards and schedules. In most cases, substantial progress begins with the placement of foundation pilings, and proof of the local building inspector's certification that the installed pilings have passed a floor and foundation inspection.
- (f) Any permit that has been suspended pursuant to G.S. 113A-121.1 as a result of a contested case petition or by order of superior court for a period longer than six months shall be extended at the applicant's written request for a period equivalent to the period of permit suspension, but not to exceed the development period authorized under Paragraph (a) of this Rule.
- (g) An applicant may voluntarily suspend development under an active permit that is the subject of judicial review by filing a written notice with the Department once the review has started. An applicant shall obtain an extension of said permit if the permitting authority finds:
- (1) That the applicant notified the permitting authority in writing of the voluntary suspension;
 - (2) The period during which the permit had been subject to judicial review is greater than six months;
 - (3) The applicant filed a written request for an extension of the development period once the judicial review had been completed; and
 - (4) The applicant undertook no development after filing the notice of suspension. The period of permit extension shall be equivalent to the length of the judicial review proceeding, but not to exceed the development period authorized under Paragraph (a) of this Rule.

History Note: Authority G.S. 113A-118;
Eff. March 15, 1978;
Amended Eff. August 1, 2002; April 1, 1995; July 1, 1989; March 1, 1985; November 1, 1984.

15A NCAC 07J .0404 DEVELOPMENT PERIOD EXTENSION

(a) For CAMA minor permits authorizing beach bulldozing, the applicant is entitled to request a one-time 30 day permit extension. No additional extensions shall be granted after the 30 day extension has expired. Notwithstanding this Paragraph, the applicant is eligible to apply for another minor permit authorizing beach bulldozing following expiration of the 30 days permit extension.

(b) Where no development has been initiated during the development period, the permitting authority shall extend the authorized development period for no more than two years upon receipt of a signed and dated request from the applicant containing the following:

- (1) a statement of the intention of the applicant to complete the work within a reasonable time;
- (2) a statement of the reasons why the project will not be completed before the expiration of the current permit;
- (3) a statement that there has been no change of plans since the issuance of the original permit other than changes that would have the effect of reducing the scope of the project, or, previously approved permit modifications;
- (4) notice of any change in ownership of the property to be developed and a request for transfer of the permit if appropriate; and
- (5) a statement that the project is in compliance with all conditions of the current permit.

Where substantial development, either within or outside the AEC, has begun and is continuing on a permitted project, the permitting authority shall grant as many two year extensions as necessary to complete the initial development. For the purpose of this Rule, substantial development shall be deemed to have occurred on a project if the permittee can show that development has progressed beyond basic site preparation, such as land clearing and grading, and construction has begun and is continuing on the primary structure or structures authorized under the permit. For purposes of residential subdivision, installation of subdivision roads consistent with an approved subdivision plat shall constitute substantial development. Renewals for maintenance and repairs of previously approved projects may be granted for periods not to exceed 10 years.

(c) When an extension request has not met the criteria of Paragraph (b) of this Rule, the Department may circulate the request to the commenting state agencies along with a copy of the original permit application. Commenting agencies will be given three weeks in which to comment on the extension request. Upon the expiration of the commenting period the Department will notify the applicant promptly of its actions on the extension request.

(d) Notwithstanding Paragraphs (b) and (c) of this Rule, an extension request may be denied on making findings as required in either G.S. 113A-120 or G.S. 113-229(e). Changes in circumstances or in development standards shall be considered and applied to the maximum extent practical by the permitting authority in making a decision on an extension request.

(e) The applicant for a major development extension request must submit, with the request, a check or money order payable to the Department in the sum of one hundred dollars (\$100.00).

(f) Modifications to extended permits may be considered pursuant to 15A NCAC 07J .0405.

*History Note: Authority G.S. 113A-119; 113A-119.1; 113A-124(c)(8);
Eff. March 15, 1978;
Amended Eff. August 1, 2002; August 1, 2000; April 1, 1995; March 1, 1991; March 1, 1985;
November 1, 1984.*

15A NCAC 07J .0405 PERMIT MODIFICATION

(a) An applicant may modify his permitted major development and/or dredge and fill project only after approval by the Department. In order to modify a permitted project the applicant must make a written request to the Department showing in detail the proposed modifications. Minor modifications may be shown on the existing approved application and plat. Modification requests which, in the opinion of the Department, are major will require a new application. Modification requests are subject to the same processing procedure applicable to original permit applications. A permit need not be circulated to all agencies commenting on the original application if the Commission determines that the modification is so minor that circulation would serve no purpose.

(b) Modifications to a permitted project which are imposed or made at the request of the U.S. Army Corps of Engineers or other federal agencies must be approved by the Department under provisions of Paragraph (a) of this Rule dealing with permit modification procedures.

(c) Modifications of projects for the benefit of private waterfront property owners which meet the following criteria shall be considered minor modifications and shall not require a new permit application, but must be approved under the provisions of Paragraph (a) of this Rule:

- (1) for bulkheads:
 - (A) Bulkhead must be positioned so as not to extend more than an average distance of two feet waterward of the mean high water contour; in no place shall the bulkhead be more than five feet waterward of the mean high water contour; and
 - (B) All backfill must come from an upland source; and
 - (C) No marsh area may be excavated or filled; and
 - (D) Work must be undertaken because of the necessity to prevent significant loss of private residential property due to erosion; and
 - (E) The bulkhead must be constructed prior to any backfilling activities; and
 - (F) The bulkhead must be constructed so as to prevent seepages of backfill materials through the bulkhead; and
 - (G) The bulkhead may not be constructed in the Ocean Hazard AEC;
- (2) for piers, docks and boathouses:
 - (A) The modification or addition may not be within 150 feet of the edge of a federally-maintained channel; and
 - (B) The structure, as modified, must be 200 feet or less in total length offshore; and
 - (C) The structure, as modified, must not extend past the four feet mean low water contour line (four feet depth at mean low water) of the waterbody; and
 - (D) The project as modified, must not exceed six feet in width; and
 - (E) The modification or addition must not include an enclosed structure; and
 - (F) The project shall continue to be used for private, residential purposes;
- (3) for boatramps:
 - (A) The project, as modified, would not exceed 10 feet in width and 20 feet offshore; and
 - (B) The project shall continue to be used for private, residential purposes.

(d) An applicant may modify his permitted minor development project only after approval by the local permit-letting authority. In order to modify a permitted project the applicant must make a written request to the local minor permit-letting authority showing in detail the proposed modifications. The request shall be reviewed in consultation with the appropriate Division of Coastal Management field consultant and granted if all of the following provisions are met:

- (1) The size of the project is expanded less than 20 percent of the size of the originally permitted project; and
- (2) A signed, written statement is obtained from all adjacent riparian property owners indicating they have no objections to the proposed modifications; and
- (3) The proposed modifications are consistent with all local, state, and federal standards and local Land Use Plans in effect at the time of the modification requests; and
- (4) The type or nature of development is not changed.

Failure to meet these provisions shall necessitate the submission of a new permit application.

(e) The applicant for a major permit modification must submit with the request a check or money order payable to the Department in the sum of one hundred dollars (\$100.00) for a minor modification and two hundred fifty dollars (\$250.00) for a major modification.

History Note: Authority G.S. 113A-119; 113A-119.1; 113A-124(c)(5); 113-229; Eff. March 15, 1978; Amended Eff. August 1, 2000; March 1, 1991; August 1, 1986; November 1, 1984.

15A NCAC 07J .0406 PERMIT ISSUANCE AND TRANSFER

(a) Upon approval of an application and issuance of the permit, the permit shall be delivered to the applicant, or to any person designated by the applicant to receive the permit, by first class mail or any appropriate means.

(b) Anyone holding a permit may not assign, transfer, sell, or otherwise dispose of a permit to a third party.

(c) A permit may be transferred to a new party at the discretion of the Director of the Division of Coastal Management upon finding each of the following:

- (1) a written request from the new owner or developer of the involved properties;

- (2) a deed, a sale, lease, or option to the proposed new party showing the proposed new party as having the sole legal right to develop the project;
 - (3) that the applicant transferee will use the permit for the purposes for which it was issued;
 - (4) no substantial change in conditions, circumstances, or facts affecting the project;
 - (5) no substantial change or modification of the project as proposed in the original application.
- (d) A person aggrieved by a decision of the Director as to the transfer of a permit may request a declaratory ruling by the Coastal Resources Commission as per 15A NCAC 7J .0600, et. seq.
- (e) The applicant for a permit transfer must submit with the request a check or money order payable to the Department in the sum of one hundred dollars (\$100.00).

History Note: Authority G.S. 113A-118(c); 113A-119(a); 113A-119.1; Eff. March 15, 1978; Amended Eff. August 1, 2000; March 1, 1991; March 1, 1990; October 15, 1981.

15A NCAC 07J .0407 PROJECT MAINTENANCE: MAJOR DEVELOPMENT/DREDGE AND FILL

(a) No project previously requiring a major development or dredge and fill permit shall be maintained after the expiration of the authorized development period without approval from the Department. Permits may contain provisions which allow the applicant to maintain the project after its completion. Persons wishing to maintain a project beyond the development period and whose permit contains no maintenance provision shall apply for a maintenance permit. This Rule does not apply to maintenance required by rule or by permit condition.

(b) Maintenance Request. Persons desiring to initiate maintenance work on a project pursuant to the maintenance provisions of an existing permit shall file a request at least two weeks prior to the initiation of maintenance work with:

Department of Environment and Natural Resources
 Division of Coastal Management
 400 Commerce Avenue
 Morehead City, NC 28557

(c) Such requests shall include:

- (1) the name and address of the permittee;
- (2) the number of the original permit;
- (3) a description of proposed changes;
- (4) in the case of a dredge and fill maintenance request, a statement that no dimensional changes are proposed;
- (5) a copy of the original permit plat with cross-hatching indicating the area to be maintained, any area to be used as spoil, and the estimated amount of material to be removed; and
- (6) the date of map revision and the applicant's signature shown anew on the original plat.

(d) Conditions for Maintenance. All work undertaken pursuant to the maintenance provisions of a permit shall comply with the following conditions:

- (1) Maintenance work under a major development permit shall be limited to activities which are within the exemptions set forth by the Commission.
- (2) Maintenance under a dredge and fill permit shall be limited to excavation and filling which is necessary to maintain the project dimensions as found in the original permit.
- (3) Maintenance work is subject to all the conditions included in the original permit.
- (4) Spoil disposal shall be in the same locations as authorized in the original permit, provided that the person requesting the authority to maintain a project may request a different spoil disposal site if he first serves a copy of the maintenance request on all adjoining landowners.
- (5) The maintenance work is subject to any conditions determined by the Department to be necessary to protect the public interest with respect to the factors enumerated in G.S. 113A-120 or G.S. 113-229.

(e) The Department may suspend or revoke the right to maintain a project in whole or in part upon a finding:

- (1) that the project area has been put to a different use from that indicated in the original permit application; or
- (2) that there has been a change of conditions in the area, newly found facts or newly reached opinions which would justify denial of a permit; or
- (3) that there has been a violation of any of the terms or conditions of the original permit.

(f) Grant or Denial of Maintenance Request

- (1) Upon receipt of a complete maintenance request the Department shall determine if there are grounds for revocation or suspension of the applicant's right to maintain. If there are grounds for revocation or suspension the applicant shall be notified of the suspension or revocation by registered letter setting forth the findings on which the revocation or suspension is based.

- (2) If the Department determines that the right to maintain should not be revoked or suspended, a letter shall be issued which shall authorize the applicant to perform maintenance work. The letter shall set forth the terms and conditions under which the maintenance work is authorized.
- (3) If the maintenance request discloses changes in the dimensions of the original project, the Department shall notify the applicant that a permit modification or renewal shall be required pursuant to the procedure set out in 15A NCAC 07J .0404 and .0405.
- (4) Appeal of department action under this Section shall be in accordance with 15A NCAC 07J .0302.

History Note: Authority G.S. 113A-103(5)c; 113A-120(b); Eff. March 15, 1978; Amended Eff. June 1, 2005; December 1, 1991; May 1, 1990; March 1, 1985; November 1, 1984.

15A NCAC 07J .0408 VIOLATION OF A PERMIT

History Note: Authority G.S. 113A-126; Eff. March 15, 1978; Amended Eff. January 25, 1980; Repealed Eff. August 1, 1989.

15A NCAC 07J .0409 CIVIL PENALTIES

(a) Purpose and Scope. This rule provides 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 in this Rule 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 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.

(c) Investigative costs. In addition to any civil penalty, the costs incurred by the Division for any investigation, inspection, and monitoring associated with assessment the civil penalty may be assessed pursuant to G.S. 113A-126(d)(4a). amount of investigative costs assessed shall be 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.

(d) 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.

(e) Procedures for Notification of 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) If restoration of affected resources is not required, the Director shall issue a civil penalty assessment within 90 days from the date of the Notice of Violation. If restoration of affected resources is required, the Director may issue a civil penalty assessment within 60 days after the Division determines that restoration of the adversely impacted resources is complete or once the date restoration was required has passed without having been completed.

(f) Procedures for Determining the Amount of Civil Penalty Assessment.

- (1) Pursuant to 113A-126(d)(1), penalties for major development violations, including violations of permit conditions, shall be assessed as follows:
 - (A) Major development that 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 as set forth in .0204 of this Subchapter, plus investigative costs.
 - (B) Major development that 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

Penalties for Major Development Permit Violations By 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
NATURAL AND CULTURAL RESOURCE AREAS (6)	\$250	\$350	\$450	\$850	\$1,250	\$2,450	\$3,650	\$5,250	\$7,250	\$9,250	\$10,000

- (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, 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 4(A) and (B) of this Paragraph.
- (D) Willful and intentional violations. The penalty assessed in accordance with Parts 4(A) and (B) of this Paragraph. 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. For the purposes of 113A-126(d)(2), the following actions shall be considered willful and intentional:
- (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;
 - (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;
 - (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.
- (E) Assessments against contractors. Any contractor, subcontractor, or person 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 (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) Assessments for 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 directed in the restoration order 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 (B) of this Subparagraph. The continuing penalty period shall be calculated from the date specified in the restoration order which accompanies the notice of violation for the unauthorized activity to cease or restoration to be completed and run until:
 - (I) the Division determines that the terms of the restoration order are satisfied;
 - (II) the respondent enters into negotiations with the Division; or
 - (III) the respondent contests the Division's order in a proceeding.
 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.
- (2) Pursuant to 113A-126(d)(2), penalties for minor development violations, including violations of permit conditions, shall be assessed as follows:
- (A) Minor development that 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 that 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 as set forth in 7J .0204 of this Subchapter, 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
Penalties for Minor Development Permit Violations By Size of Violation

AREA OF ENVIRONMENTAL CONCERN AFFECTED	Size of Violation (sq. ft.)										
	≤ 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, 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 (A) and (B) of this Subparagraph.
- (D) Willful and intentional violations. The penalty assessed under Parts (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. For the purposes of 113A-126(d)(2), the following actions shall be considered willful and intentional:
 - (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;
 - (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;
- (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.

(E) Assessments against contractors. Any contractor, subcontractor, or person 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 (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) Assessments of 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 directed in the restoration order shall be considered a continuing violation and shall be assessed an additional penalty. The amount of the penalty shall be determined according to Part (B) of this Subparagraph. The continuing penalty period shall be calculated from the date specified in the restoration order which accompanies the notice of violation for the unauthorized activity to cease and restoration to be completed and run until:
 - (I) the Division determines that the terms of the restoration order are satisfied;
 - (II) the respondent enters into 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.

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.

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

(h) Settlements. The Commission hereby delegates to the Director the authority to enter into a settlement of an appeal of a civil penalty at any time prior to the issuance of a decision by the administrative law judge in a contested case under G.S. 150B-23, and shall not require the approval of the Commission. Any settlement agreement proposed subsequent to the issuance of a decision by the administrative law judge in a contested case under G.S. 150B-23 shall be submitted to the Commission for approval.

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

15A NCAC 07J .0410 RESTORATION/MITIGATION

Any violation involving development which is inconsistent with guidelines for development within AECs (i.e., wetland fill, improper location of a structure, etc.) must be corrected by restoring the project site to

pre-development conditions upon notice by the Commission or its delegate that restoration is necessary to recover lost resources, or to prevent further resource damage. Said notice will describe the extent of restoration necessary and a time for its completion. Failure to act to complete the required restoration may be determined to constitute a separate violation, according to G.S. 113-126(d)(2), subject to the foregoing penalties. Any resources which cannot be recovered by restoration of the affected site shall be replaced in compliance with the goals of the Commission's mitigation policy.

History Note: Authority G.S. 113A-126(d); 113A-124(c); 113A-124(c)(5);
Eff. July 1, 1985.