

## **The Enforcement Process**

### **PART 800 – ENFORCEMENT OF CRM PERMITS**

#### **§ 15-10-801 PURPOSE**

The provisions of this PART are intended to establish procedures whereby the CRM Administrator may enforce the terms and conditions of CRM permits. Final actions of the CRM Administrator based upon this section are final agency action reviewable directly by the Commonwealth Superior Court pursuant to the Administrative Procedure Act, 1 CMC § 9101, et seq.

#### **§ 15-10-805 GROUNDS FOR ACTION**

The CRM Administrator shall take action to enforce compliance with CRM program policies and CRM permit conditions in any of the following cases:

(a) Misstatement. The CRM permit applicant, a party or any participant in a hearing on the CRM permit application made a material misstatement that directly and significantly affected the CRM permit decision.

Permit Violation. The CRM permit applicant or its successor in interest, has violated a material term or condition of the CRM permit. Supervening Illegality. The permitted project, as constructed or operated, has become unlawful by subsequent case law, statute, regulation, or other illegality. New Environmental Impact. The permitted project has a newly discovered adverse environmental impact.

#### **§ 15-10-810 WARNING**

The CRM Administrator, upon a determination that a permitted project violates one or more provisions of § 15-10-805, may issue a notice of intent to undertake CRM permit enforcement proceedings unless the CRM permit holder accomplishes corrective measures. This warning procedure shall not affect nor limit the CRM Administrator's duties, powers, and responsibilities under § 15-10-815.

#### **§ 15-10-815 PERMIT ENFORCEMENT NOTICE**

If after thirty (30) days of the date the CRM Administrator issued a notice of intent under § 15-10-810, the CRM permit holder has failed to take corrective action, or continues to be in violation of its CRM permit in the case of an ongoing violation, the CRM Administrator shall issue a written permit enforcement notice to the CRM permit holder.

(b) Content of Notice. A Permit enforcement notice shall include a statement of facts or conduct constituting the violation and shall indicate the intended action to be taken by the CRM Administrator. If the CRM administrator intends to impose a fine for the violation(s), the permit enforcement notice shall state the proposed amount of the fine. A permit enforcement notice shall provide for permit enforcement hearings, if requested, and inform the CRM permit holder of his or her responsibilities and rights under this part. The notice shall inform the permit holder that unless he requests a permit enforcement hearing within 30 days, the proposed sanction will be imposed.

Service. A permit enforcement notice shall be delivered by the CRM Office staff in person to the CRM

permit holder, or served by certified U.S mail addressed to the CRM permit holder, or his designated agent. Proof of service shall be made by affidavit.

Response to Notice. If CRM permit holder believes the statement of facts or conduct constituting violation in the permit enforcement notice is inaccurate, and desires a permit enforcement hearing, he/she shall respond in writing to the CRM Administrator within thirty (30) days of service of the permit enforcement notice. This response shall include a written statement indicating the CRM permit holder's arguments.

#### **§ 15-10-820 EMERGENCY SUSPENSION**

If the CRM Administrator determines that a CRM permit holder has willfully violated a provision of § 15-10-805 or the public health, safety, or welfare imperatively requires immediate action, the CRM Administrator may order emergency summary suspension of a CRM permit pending proceedings for revocation or other action, notwithstanding, any notice requirement under § 15-10-815. If a permit enforcement hearing is requested, the proceeding shall be promptly instituted and determined pursuant to § 15-10-825.

#### **§ 15-10-825 PERMIT ENFORCEMENT HEARING**

Upon receipt of a request for permit enforcement hearing, the CRM Administrator shall schedule a hearing within fifteen (15) days. The CRM Administrator or his designee shall preside at CRM enforcement hearings, shall control the taking of testimony and evidence and shall cause to be made an audio recording or stenographic record of CRM enforcement hearings. Evidence presented at such hearings need not conform with any prescribed rules of evidence but may be limited by the CRM Administrator in any manner she/he reasonably determines to be just and efficient and promote the ends of justice. Permit enforcement hearings shall conform to the provisions of the Administrative Procedure Act, 1 CMC § 9108, et seq. The CRM Administrator shall issue a decision within ten (10) days of the close of the enforcement hearing and all orders shall be in writing and accompanied by written findings of fact and conclusions of law. The standard of proof for such hearing shall be by the preponderance of the evidence.

#### **§ 15-10-830 REMEDIES**

Upon a determination by the CRM Administrator and/or CRM agency officials that a violation did occur, the CRM Administrator may order any or all of the following remedies:

(c)Revocation. The CRM permit may be revoked in its entirety. Suspension. The CRM permit may be temporarily suspended for a given period, or until the occurrence of a given event or satisfaction of a specific condition. Corrective Measures. Measures may be ordered of the CRM permit holder so that the project conforms to the CRM permit terms and conditions. Civil Fines. The CRM Administrator may impose a civil fine in an amount not to exceed \$10,000 per day for each day the violation of the CRM permit occurred pursuant to 2 CMC § 1543(a). For purposes of computing a fine, any day that the CRM Administrator finds that a violation of the CRM permit occurred may be counted. The CRM Administrator shall, in his discretion, set fines in an amount calculated to compel compliance with CRM permit conditions, applicable law, and any order issued by the Administrator, taking into consideration the value of the existing and

potential damage to the environment caused by the violation, efforts at compliance, and/or any other factors that the Administrator finds relevant to the calculation.

## **PART 900 - ENFORCEMENT OF CRM STANDARDS AND POLICIES**

### **§ 15-10-901 PURPOSE**

The provisions of this PART are intended to establish procedures whereby the CRM Administrator and/or CRM agency officials may enforce penalties against persons conducting activities or participating in projects within the jurisdiction of the CRM program without a required CRM permit. The actions of the CRM Administrator and/or CRM agency officials based upon this PART are agency action reviewable by the Commonwealth Superior Court.

### **§ 15-10-905 INVESTIGATION**

(d) The CRM Administrator shall have the authority to investigate suspected violations of CNMI P.L. 3-47 [2 CMC §§ 1501, et seq.] or this CHAPTER. If practicable, the CRM Administrator shall first request the person or persons having knowledge or custody of the information to voluntarily produce or allow access to it. If voluntary production of or access to the information is not forthcoming, the CRM Administrator may implement the following measures to compel disclosure.

Authority to Search.

(1) Consent from Permit Application. The CRM Administrator or his designee may enter, at any reasonable time, the site of a proposed project for which there exists a signed CRM permit application on file with the CRM Office.

(2) Permit Authorization. The CRM Administrator or his designee may enter, at any reasonable time, the site of a project for which there has been granted a CRM permit.

(3) Search Warrant. The CRM Administrator may, if necessary, apply to the Commonwealth Superior Court for a search warrant allowing entry onto a project site on land or water subject to CRM program jurisdiction, pursuant to applicable law of administrative searches, regardless of the existence of a pending CRM permit application or a currently valid CRM permit.

### **§ 15-10-910 CONDITIONS WARRANTING INVESTIGATION**

The CRM Administrator may act pursuant to this section upon a reasonable determination that a violation of CNMI P.L. 3-47 [2 CMC §§ 1501, et seq.] or this CHAPTER, or CRM administrative orders issued under this CHAPTER has occurred. Such violations include, but are not limited to, projects undertaken without a required CRM permit and activities that do not conform to CRM permit terms and conditions under PART 800.

### **§ 15-10-915 WARNING**

Upon a determination that a violation of law subject to CRM program jurisdiction has occurred, the CRM Administrator may issue a cease and desist order to the person(s) responsible for the violation and state notice of intent to undertaken legal proceedings

unless corrective measures are undertaken. The letter shall state the corrective measures necessary and shall provide for a period in which compliance shall be effected.

#### **§ 15-10-920 ENFORCEMENT**

Upon a determination that a person other than a CRM permit holder is in violation of CNMI P.L. 3-47 [2 CMC §§ 15-10-920], or applicable rules and regulations or administrative orders issued thereunder, the CRM Administrator shall promptly issue an enforcement notice to the offending party. The enforcement notice shall be delivered personally to the offending party or, if such service is not reasonably possible, it may be sent by certified mail to his residence or place of business.

(e)Content of Enforcement Notice.

(1) Completed Violation. If acts constituting a violation are complete and the violation is not of an ongoing nature, the enforcement notice shall include a statement of the facts and conduct constituting the violation, the amount of an imposed fine, if any, a warning not to repeat the unlawful activity and a statement that a hearing on the findings of violation or size of the fine is available if the CRM Administrator is so requested, in writing, within seven (7) days of service of the enforcement notice.

(2) Continuing Violation. If acts constituting a violation are of an ongoing nature or likely to be repeated, the enforcement notice shall include a statement of facts and conduct constituting the violation, a statement of an imposed, continuing fine, if any, an order to cease and desist the activity giving rise to a violations, a warning that additional fines may be imposed for failure to cease and desist the prohibited activity and a statement that an enforcement hearing on the finding of violation or size of the fine is available if the CRM Administrator is so requested, in writing, within seven

(7) days of service of the enforcement notice. Response to Notice. If the party to whom enforcement notice is sent objects to the finding of violation, or seeks an enforcement hearing on the fine, he shall submit a written response to the enforcement notice within seven (7) days of service of the enforcement notice. Failure to provide written response or to demand an enforcement hearing within the prescribed period shall be deemed a waiver of defense and the right to an enforcement hearing and the fine, as set in the enforcement notice, shall upon expiration of the seven (7) days period, become immediately due and payable to the CNMI Treasurer. All fines shall be paid by check made payable to the Treasurer of the CNMI. A copy of the payment receipt shall be provided to the CRM Office by the violator.

#### **§ 15-10-925 DETERMINATION OF FINES AND PENALTIES**

The CRM Administrator shall, in his sound discretion; set fines in an amount calculated to compel compliance with applicable law and administrative orders and shall consider the value of the existing and potential value of the damage to the environment proximately caused by the violation described in PART 800 and PART 900. In no event, however, shall any fine imposed exceed the ceiling imposed by 2 CMC § 1543. In addition the CRM Administrator may order the offending party to cease and desist from the activity that is in violation, take mitigation measures to cure the violation or seek any other remedy available at law or in equity.

#### **§ 15-10-930 ENFORCEMENT HEARING**

If a written response to an enforcement notice is filed with the CRM Office requesting an enforcement hearing it shall be conducted by CRM Administrator pursuant to § 15-10-825. The decision of the CRM Administrator shall be final as within the CRM program. Appeal from an enforcement decision shall be to the Commonwealth Superior Court within thirty (30) days following service of the CRM Administrator's written enforcement decision on the offending party.

#### **§ 15-10-935 ENFORCEMENT BY COMMONWEALTH SUPERIOR COURT**

Fines and cease and desist orders issued by the CRM Administrator for purposes of enforcement constitute official agency orders and must be complied with, by persons determined in violation of CRM program policies or CRM permit conditions. In the event fines are imposed or cease and desist order issued, and compliance with either is refused, the CRM Administrator may file in Commonwealth Superior Court seeking court enforcement.

#### **§ 15-10-940 ENFORCEMENT BY CRIMINAL PROSECUTIONS**

If the CRM Administrator has reason to believe that a person in violation of CRM program policies or CRM permit conditions or administrative orders issued thereunder has committed criminal offense within the definition provided in 2 CMC 1543 (b), (d), he shall promptly submit a report of the violation to the Attorney General.

#### **§ 15-10-945 ADMINISTRATIVE ORDER**

For purposes of PART 800 and 900 administrative orders shall be any orders issued by the CRM Administrator for enforcement of CRM policies and regulations pursuant to 2 CMC § 1453(a).