

**TABLE OF CONTENTS**

**Assessment of Civil Penalties**

Repealed . . . . . 22a-6b-100—22a-6b-102

**Assessment of Civil Penalties for Violations of the Terms of an Order to Abate Pollution of or to Correct Potential Sources of Pollution to the Waters of the State**

Repealed . . . . . 22a-6b-503(a)—22a-6b-503(k)

**Assessment of Civil Penalties for Violation of Monitoring Report Requirements of Orders and Permits Issued by the Commissioner**

Repealed . . . . . 22a-6b-504(a)—22a-6b-504(h)

**Civil Penalty Regulations for Air Compliance**

Repealed . . . . . 22a-6b-600—22a-6b-601

**Assessment of Civil Penalties for Violation of Air Emissions Standards and Orders of the Commissioner**

Repealed . . . . . 22a-6b-602(a)—22a-6b-602(j)

**Assessment of Civil Penalties for Violation of the Terms of an Order to Abate an Emissions Violation**

Repealed . . . . . 22a-6b-603(a)—22a-6b-699

**Civil Penalty for Cover, Closure and Monitoring Report Requirements for Solid and Special Waste Disposal Areas**

Repealed . . . . . 22a-6b-700—22a-6b-701

**Administrative Civil Penalty**

Authority . . . . . 22a-6b- 1

Purpose . . . . . 22a-6b- 2

Definitions . . . . . 22a-6b- 3

Procedures . . . . . 22a-6b- 4

Scope of issues at hearing . . . . . 22a-6b- 5

Burden of proof . . . . . 22a-6b- 6

Commissioner’s powers . . . . . 22a-6b- 7

Method and schedule for calculating an administrative civil penalty . . . . . 22a-6b- 8

Assessment of administrative civil penalty—penalty recalculation . . . . . 22a-6b- 9

Settlement conferences . . . . . 22a-6b-10

Assessment of administrative civil penalty—resolution of penalty notice  
prior to completion of settlement conference. . . . . 22a-6b-11

Assessment of administrative civil penalty—resolution of penalty notice  
after settlement conference but prior to hearing . . . . . 22a-6b-12

Assessment of administrative civil penalty—resolution of penalty notice  
by consent order. . . . . 22a-6b-13

Final decision on a penalty notice. . . . . 22a-6b-14

Payment of penalties . . . . . 22a-6b-15

## Assessment of Civil Penalties

### Secs. 22a-6b-100—22a-6b-701.

Repealed, May 29, 2007.

## Administrative Civil Penalty

### Sec. 22a-6b-1. Authority

Sections 22a-6b-1 to 22a-6b-15, inclusive, shall be known as the department's Administrative Civil Penalty Regulations.

(Adopted effective May 29, 2007)

### Sec. 22a-6b-2. Purpose

The department's Administrative Civil Penalty Regulations are intended to: establish standards and procedures for assessing administrative civil penalties for violations of certain statutes, regulations, orders, and licenses administered or issued by the commissioner; expedite the department's administrative enforcement processes; remove any competitive or financial gain associated with noncompliance; insure immediate compliance and deter future noncompliance; and assure fairness and consistency in the assessment of administrative civil penalties. The department's Administrative Civil Penalty Regulations are only applicable to administrative enforcement actions as identified herein and taken hereunder.

(Adopted effective May 29, 2007)

### Sec. 22a-6b-3. Definitions

As used in the department's Administrative Civil Penalty Regulations,

(1) "100-Year Floodplain" means that area that is identified as the 100-year flood limit or the 100-year flood boundary or the special flood hazard areas inundated by the 100-year flood on a map developed by FEMA and adopted by the municipality wherein the area is located;

(2) "Administrative civil penalty" means a penalty calculated in accordance with the department's Administrative Civil Penalty Regulations;

(3) "Approval" means an approval issued by the commissioner of any document or action required or allowed by a permit or order issued by him, or of any document or action required by regulation or statute;

(4) "Coastal resources" means "coastal resources" as defined in section 22a-93 of the Connecticut General Statutes;

(5) "Commissioner" means "commissioner" as defined in subsection (b) of section 22a-2 of the Connecticut General Statutes;

(6) "Connecticut natural diversity data base" means the data base defined in section 23-73 of the Connecticut General Statutes;

(7) "Consumptive use" means any withdrawal from or removal of the waters of the state;

(8) "Department" means the Connecticut Department of Environmental Protection;

(9) "Diversion" means diversion as defined in section 22a-367 of the Connecticut General Statutes;

(10) "FEMA" means the Federal Emergency Management Agency;

(11) "Flood fringe" means any portion of the 100-year floodplain that is not located within the floodway;

(12) “Floodway” means that area that is identified as the floodway on a map developed by FEMA and adopted by the municipality wherein the area is located;

(13) “General permit” means a general permit issued by the commissioner under section 22a-45a, 22a-208a, 22a-349a, 22a-361, 22a-378a or 22a-411 of the Connecticut General Statutes;

(14) “Hearing officer” means “hearing officer” as defined in section 4-166 of the Connecticut General Statutes;

(15) “Inland water resources” means those wetlands and water resources that are regulated under sections 22a-36 through 22a-45a, sections 22a-342 through 22a-349a, sections 22a-365 through 22a-379, and sections 22a-401 through 22a-411 of the Connecticut General Statutes;

(16) “Inland wetlands” means “wetlands” as defined in section 22a-38 of the Connecticut General Statutes;

(17) “Legal requirement” means any provision of a statute, regulation, license, order or approval issued, entered, adopted or administered by the commissioner;

(18) “License” means “license” as defined in section 4-166 of the Connecticut General Statutes;

(19) “Order” means “order” as defined in section 22a-3a-2 of the Regulations of Connecticut State Agencies, and includes a penalty notice;

(20) “Penalty notice” means a notice issued by the commissioner pursuant to subsection (c) of section 22a-6b of the Connecticut General Statutes, and includes an amended penalty notice;

(21) “Permit” means a permit issued by the commissioner under Chapter 439, 440, 441, 446i, or 446j of the Connecticut General Statutes and includes a certificate of permission, a certificate of approval pursuant to section 22a-405 of the Connecticut General Statutes, a temporary authorization or emergency authorization pursuant to section 22a-6k of the Connecticut General Statutes, and a general permit;

(22) “Person” means “person” as defined in section 22a-2 of the Connecticut General Statutes;

(23) “Rare, threatened or endangered species” means any species determined by the commissioner in regulations adopted under section 26-306 of the Connecticut General Statutes to be endangered, threatened, or species of special concern;

(24) “Referee” means an individual appointed by the Director of the Office of Adjudications to conduct a settlement conference in a department proceeding. Such individual may be an employee of the department;

(25) “Respondent” means a person to whom or which an order is issued;

(26) “Staff” means “staff” as defined in section 22a-3a-2(a) of the Regulations of Connecticut State Agencies;

(27) “Tidal wetlands” mean “wetland” as defined in section 22a-29 of the Connecticut General Statutes;

(28) “Violation” means a failure to comply with a legal requirement;

(29) “Waters” means “waters” as defined in section 22a-423 of the Connecticut General Statutes;

(30) “Water Quality Standards” means the standards of water quality adopted or amended by the commissioner under section 22a-426 of the Connecticut General Statutes;

(31) “Watercourses” means “watercourses” as defined in section 22a-38 of the Connecticut General Statutes; and

(32) “Wetlands” means “inland wetlands” and “tidal wetlands”.

(Adopted effective May 29, 2007)

**Sec. 22a-6b-4. Procedures**

Except as may be provided in section 22a-6b of the Connecticut General Statutes and in the department's Administrative Civil Penalty Regulations, all proceedings on penalty notices shall be governed by the department's Rules of Practice, sections 22a-3a-2 and 22a-3a-6 of the Regulations of Connecticut State Agencies.

(Adopted effective May 29, 2007)

**Sec. 22a-6b-5. Scope of issues at hearing**

The issues that may be raised at a hearing on a penalty notice shall be pertinent to any of the following:

- (1) Occurrence of the stated violation;
- (2) Assessment of the administrative civil penalty;
- (3) Mitigating factors; and
- (4) Any other issue required by law for the commissioner to determine in a hearing on a penalty notice.

(Adopted effective May 29, 2007)

**Sec. 22a-6b-6. Burden of proof**

In any proceeding on a penalty notice, the staff shall have the burden of going forward and of persuasion as to the occurrence of a violation and the assessment of the penalty consistent with section 22a-6b of the Connecticut General Statutes and the department's Administrative Civil Penalty Regulations, except that the respondent shall have the burden of going forward and of persuasion as to any factor tending to mitigate the amount of the penalty assessed for such violation.

(Adopted effective May 29, 2007)

**Sec. 22a-6b-7. Commissioner's powers**

Nothing in the department's Administrative Civil Penalty Regulations shall affect the commissioner's authority to institute any other proceeding authorized by law.

(Adopted effective May 29, 2007)

**Sec. 22a-6b-8. Method and schedule for calculating an administrative civil penalty**

The requirements and procedures of this section incorporate the criteria listed in sections 22a-6b(b)(1) through 22a-6b(b)(10) of the Connecticut General Statutes, and shall be used to determine the administrative civil penalty amount for each distinct violation. The commissioner may consider any violation to be distinct for each day such violation existed. The commissioner may assess a separate administrative civil penalty for each distinct violation in order to ensure immediate or continued compliance. No administrative civil penalty assessed pursuant to the department's Administrative Civil Penalty Regulations shall exceed the maximum allowable penalty set forth in section 22a-6b of the Connecticut General Statutes.

**(a) Administrative Civil Penalty Determination.**

The penalty for each distinct violation shall be determined as follows: Calculate the amount of economic benefit resulting from the violation in accordance with subsection (b), calculate the gravity-based penalty component in accordance with subsection (c), and calculate the gravity-based penalty adjustments in accordance with subsection (d). The administrative civil penalty for each distinct violation is the sum of the economic benefit, gravity-based penalty component, and any gravity-based penalty adjustments.

**(b) Economic Benefit.**

If the respondent derived a measurable economic benefit, such as savings in money, time and effort, as a result of the violation, the commissioner shall calculate the amount of such economic benefit. Economic benefit includes but may not be limited to lower, delayed or avoided compliance costs. The commissioner need not calculate economic benefit if there is no identifiable benefit from the noncompliance or the amount of economic benefit cannot be quantified. The total economic benefit for a violation shall not be less than zero.

**(c) Gravity-Based Penalty Component.**

The gravity-based penalty component shall be calculated as follows:

(1) Inland Water Resources, Stream Channel Encroachment Lines, Water Diversion or Dam Safety Violations.

Each distinct violation of section 22a-39, 22a-42a, 22a-45a, 22a-342, 22a-345 through 22a-347, 22a-349a, 22a-368, 22a-401 through 22a-405, or 22a-411 of the Connecticut General Statutes, or of any regulation, order or permit administered or issued thereunder, or of an order issued or administered under section 22a-6 or 22a-7 of the Connecticut General Statutes to enforce any provision of sections 22a-36 through 22a-45a, sections 22a-342 through 22a-349a, sections 22a-365 through 22a-379, or sections 22a-401 through 22a-411 of the Connecticut General Statutes, shall first be evaluated in terms of its potential for harm to human health and welfare and the environment using each of the four sub-factors listed in Table 1A. The applicable sub-score under each sub-factor is the highest score that corresponds to the characteristics of the distinct violation. A sub-score of zero shall be used for any sub-factor for which none of the listed characteristics are associated with such violation. The total potential for harm score for each distinct violation is the sum of the four sub-scores.

| <b>Table 1A<br/>Potential For Harm Sub-factors For Inland Water Resources, Stream Channel Encroachment Lines, Water Diversion Or Dam Safety Violations</b> |  |
|--|--|
| <b>SUB-FACTOR 1: Potential Impact To The Environment, To Human Health And Welfare, Or To Property Caused By The Violation.</b>                             |  |
| <b>Sub-score</b>   | <b>Characteristics</b>   |
| 2  | Violation involves a land disturbance of 1/2 acre or less, and erosion and sediment controls were either not installed or improperly installed or maintained;<br><br>Violation involves or impacts a dam with an assigned hazard classification of "A" as determined in accordance with section 22a-409-2 of the Regulations of Connecticut State Agencies;<br><br>Violation is within a FEMA designated flood fringe and the violation neither caused any loss of flood storage nor created a potential increase in flood heights;<br><br>Violation resulted in the alteration of a wetland or watercourse, but caused either negligible or no apparent damage to such wetland or watercourse; or<br><br>A water diversion violation that caused either negligible or no apparent impact on an inland water resource. |
| 4  | Violation involves a land disturbance that is greater than 1/2 acre but less than 10 acres, and erosion and sediment controls were either not installed or were improperly installed or maintained;  |

|   |   |
|---|---|
|   | <p>Violation involves or impacts a dam with an assigned hazard classification of “B” or “BB” as determined in accordance with section 22a-409-2 of the Regulations of Connecticut State Agencies;</p> <p>Violation is located within a FEMA designated flood fringe and the violation either caused a loss of flood storage or caused a potential increase in flood heights;</p> <p>A water diversion violation that caused damage to an inland water resource, but such damage is not permanent, and the diversion has neither contributed to nor resulted in human injury or property damage;</p> <p>A diversion of water for consumptive use that may contribute to the degradation of surface water quality for a waterbody not meeting water quality standards as identified by the department pursuant to section 303(d) of the Federal Clean Water Act; or</p> <p>Violation resulted in the alteration of a wetland or watercourse, and the alteration caused damage to a wetland or watercourse but such damage is not permanent.</p> |
| 6 | <p>Violation involves a land disturbance that is greater than or equal to 10 acres and erosion and sediment controls were either not installed or were improperly installed or maintained;</p> <p>Violation involves or impacts a dam with an assigned hazard classification of “C” as determined in accordance with section 22a-409-2 of the Regulations of Connecticut State Agencies;</p> <p>Violation is located within a FEMA designated floodway;</p> <p>A water diversion violation that caused damage to an inland water resource, but the diversion cannot be ceased or the damage cannot be remediated, or the diversion violation has contributed to or resulted in human injury or loss of life or property damage;</p> <p>Violation resulted in the alteration of a wetland or watercourse, and the alteration caused permanent damage to a wetland or watercourse; or</p> <p>Violation caused the destruction of or damage to endangered species habitat.</p>   |

| <p align="center"><b>Table 1A [Continued]</b></p>   |  |
|---|--|
| <p align="center"><b>Potential For Harm Sub-factors For Inland Water Resources, Stream Channel Encroachment Lines, Water Diversion Or Dam Safety Violations</b></p> |  |
| <p><b>SUB-FACTOR 2: Quantity Or Extent Of Resource Potentially Impacted By The Violation.</b></p>   |  |
| <p><b>Sub-score</b></p>   | <p><b>Characteristics</b></p>  |
| 1   | <ul style="list-style-type: none"> <li>➤ Less than 5,000 square feet of wetland, watercourse, floodplain, or land riverward of a State established stream channel encroachment line;</li> <li>➤ Less than 200 linear feet of watercourse; or</li> <li>➤ Violation had a potential to result in a consumptive withdrawal of surface or ground water that is less than 250,000 gallons per day.</li> </ul> |
| 2   | <ul style="list-style-type: none"> <li>➤ From 5,000 to 50,000 square feet of wetland, watercourse, floodplain, or land riverward of a State established stream channel encroachment line;</li> <li>➤ From 200 to 1,000 linear feet of watercourse; or</li> </ul>   |

|  |   |
|--|---|
|  | <ul style="list-style-type: none"> <li>➤ Violation had a potential to result in 250,000 to 2,000,000 gallons per day of consumptive withdrawal of surface or ground water.</li> </ul>   |
| 3  | <ul style="list-style-type: none"> <li>➤ Physically impact more than 50,000 square feet of wetland, watercourse, floodplain, or land riverward of a State established stream channel encroachment line;</li> <li>➤ Physically impact more than 1,000 linear feet of watercourse; or</li> <li>➤ Violation had a potential to result in more than 2,000,000 gallons per day of consumptive withdrawal of surface or ground water.</li> </ul>  |
| <b>SUB-FACTOR 3: Quality Or Condition Of Natural Resource Potentially Impacted By The Violation.</b>   |   |
| <b>Sub-score</b>   | <b>Characteristics</b>  |
| 1  | Class C Inland Surface Water that is not a swamp, marsh, bog, vernal pool or wetland containing alluvial or floodplain soils; or groundwater classified as GC. <sup>α</sup>   |
| 2  | Class B Inland Surface Water that is not a swamp, marsh, bog, vernal pool or wetland containing alluvial or floodplain soils; or groundwater classified as GB. <sup>α</sup>   |
| 3  | <p>Oligotrophic Lake or Class A Inland Surface Water or Class AA Inland Surface Water, or any swamp, marsh, bog, vernal pool or wetland, or groundwater classified as GA, GA*, GAA, GAAs or GAA*;<sup>α</sup></p> <p>Coldwater fishery, special management area as described in section 26-112-46 of the Regulations of Connecticut State Agencies, or a stocked watercourse;</p> <p>All or a portion of the area potentially impacted is part of the Connecticut natural diversity database inventory; or</p> <p>The violation is located in or potentially impacts a public water supply watershed.</p> |
| <b>SUB-FACTOR 4: Potential Impact On The Department’s Ability, Through its Regulatory Programs, To Prevent Or Monitor Potential Harm To Human Health And Welfare Or The Environment.</b> |   |
| <b>Sub-score</b>   | <b>Characteristics</b>  |
| 1  | Failure to provide notification to the department upon completion of an activity, when such notification was required by a statute, regulation, order, permit or approval.  |
| 2  | <p>Failure to obtain an authorization for a regulated activity that could have been covered under a general permit; or</p> <p>Failure to submit on time a monitoring or progress report, notice of commencement of an activity, non-compliance notice, or any other notice or report, except a notice of completion, required by a statute, regulation, order, permit or approval.</p>  |
| 3  | Failure to obtain a permit for a regulated activity that was not covered by a general permit, or to submit on time plans or descriptions of work, or to perform any other action required by a statute, regulation, order, permit or approval.  |

<sup>α</sup>Surface water and groundwater classifications as prescribed by the Water Quality Standards.

Each distinct violation shall then be evaluated in terms of its extent of deviation from the legal requirement using the criteria in Table 1B.

| <b>Table 1B</b><br><b>Extent of Deviation Criteria For Inland Water Resources, Stream Channel Encroachment Lines, Water Diversion Or Dam Safety Violations</b> |  |
|--|--|
| <b>Extent of Deviation</b>   | <b>Criteria</b>  |
| Minor  | Minimal noncompliance with the legal requirement in that the violator deviates somewhat from the requirement but that most of the requirement, or all important aspects of the requirement, were met after either minimal or no delay. |
| Significant  | Deviation from the legal requirement that does not meet the criteria for minor deviation.  |

The gravity-based penalty component for each distinct violation shall comprise:

- (1) A gravity-based penalty for the first day of violation, which is obtained from the appropriate subcell in the penalty matrix in Table 1C; and
- (2) A gravity-based penalty for each day the violation continued beyond the first day, which is equal to the number of days such violation continued beyond the first day multiplied by an amount not less than ten percent and not greater than twenty-five percent of the first day gravity-based penalty.

| <b>Table 1C</b><br><b>Penalty Matrix for Inland Water Resources, Stream Channel Encroachment Lines, Water Diversion Or Dam Safety Violations</b> |                            |              |
|--|----------------------------|--------------|
| <b>POTENTIAL FOR HARM</b>  | <b>EXTENT OF DEVIATION</b> |              |
| <b>Total Score</b>   | <b>Significant</b>         | <b>Minor</b> |
| 15   | \$ 1,000                   | \$ 600       |
| 14   | \$ 930                     | \$ 570       |
| 13   | \$ 860                     | \$ 540       |
| 12   | \$ 790                     | \$ 510       |
| 11   | \$ 720                     | \$ 480       |
| 10   | \$ 480                     | \$ 180       |
| 9  | \$ 424                     | \$ 160       |
| 8  | \$ 368                     | \$ 140       |
| 7  | \$ 312                     | \$ 120       |
| 6  | \$ 256                     | \$ 100       |
| 5  | \$ 110                     | \$ 50        |
| 4  | \$ 100                     | \$ 45        |
| 3  | \$ 90                      | \$ 40        |
| 2  | \$ 80                      | \$ 35        |
| 1  | \$ 70                      | \$ 35        |

(2) Tidal Wetlands, Structures, Dredging and Fill Violations.

Each distinct violation of section 22a-32, 22a-359, 22a-361 or 22a-362 of the Connecticut General Statutes, or of a regulation administered or issued thereunder, or of a permit administered or issued either thereunder or under section 22a-363b or 22a-363d of the Connecticut General Statutes, or of an order administered or issued under section 22a-6, 22a-7 or 22a-363f of the Connecticut General Statutes to enforce either section 22a-32, 22a-359, 22a-361, 22a-362, 22a-363b, 22a-363d or 22a-363f of the Connecticut General Statutes or a regulation or permit administered or issued thereunder, shall first be evaluated in terms of its potential for harm to human health and welfare and the environment using each of the three sub-factors listed in Table 2A. The applicable category of harm for each sub-factor is the highest category that corresponds to the characteristics of the distinct violation. The potential for harm of such violation shall be the highest category of harm identified in the sub-factor analysis.

| <p align="center"><b>Table 2A</b><br/> <b>Potential for Harm Sub-factors for Tidal Wetlands,</b><br/> <b>Structures, Dredging or Fill Violations</b></p> |  |                         |
|--|--|-------------------------|
| <b>Potential for Harm Sub-Factors</b>  | <b>Violation Characteristics</b>   | <b>Category of Harm</b> |
| 1. Potential Impact to a Coastal Resource  | Dredging, excavating or filling, or performing work incidental thereto, of a tidal wetland, intertidal flat, submerged aquatic vegetation or other statutorily protected coastal resource; or placing a structure or performing work incidental thereto either on, in, or affecting any tidal wetland, intertidal flat, submerged aquatic vegetation or other coastal resource.                              | Major                   |
|  | A violation that has a significant potential to cause damage to any coastal resource, or has caused damage that can be fully remediated within one year.   | Moderate                |
|  | Storage or placement of boats, floats or other material in a tidal wetland, or deposition or disposal of brush or other readily retrievable material.  | Minor                   |
| 2. Encroachments   | Constructing a new bulkhead or seawall, or performing work incidental thereto; or excavating or filling, or performing work incidental thereto, with heavy equipment waterward of the high tide line; or constructing docks or other marine facilities, or performing work incidental thereto, for five or more boats, or greater than forty feet in length.   | Major                   |
|  | Constructing or placing docks or other marine facilities, or performing work incidental thereto, for two to four boats, or less than or equal to forty feet in length; non-water-dependent encroachments such as decks, gazebos and floating homes with no potential for discharges; or capping or additional riprap, concrete or rocks placed on existing erosion control structures or armored shorelines. | Moderate                |
|  | Constructing or placing a residential dock, or performing work incidental thereto, not greater than thirty feet in length for only   | Minor                   |

|   |   |          |
|---|---|----------|
|   | one boat; or a deck, balcony or other attachment which extends waterward of the high tide line.   |          |
| 3. Navigational or Riparian Interference. | Constructing or placing a structure, or performing work incidental thereto, which encroaches into a navigational channel or creates a clear and obvious obstruction to riparian access, public access, navigation, fishing or other traditional public trust use.                                     | Major    |
|   | Constructing or placing a structure, or performing work incidental thereto, that results in less than a complete blockage or obstruction to riparian access, public access, navigation, fishing or other traditional public trust use, and creates a potential navigational or riparian interference. | Moderate |
|   | Structures that appear to cross riparian boundaries or may affect navigation under certain conditions.  | Minor    |

If the distinct violation does not have any of the characteristics listed in Table 2A, the potential for harm of such violation shall each be categorized as either major, moderate or minor using Table 2B.

| <b>Table 2B<br/>Alternate Potential for Harm Characteristics for Tidal Wetlands,<br/>Structures, Dredging or Fill Violations</b> |  |
|--|--|
| <b>Category of Harm</b>  | <b>Violation Characteristics</b>   |
| Major  | Unauthorized activity which, without rapid and active restoration or remediation of the site or other impacted area, could create permanent resource damage, significant encroachment or acute and ongoing navigational or riparian interference, or which substantially inhibit or limit the Department’s ability, through its regulatory programs, to ensure against actual or potential harm to the environment or to public health or welfare. |
| Moderate   | Unauthorized activity that could cause a substantial adverse impact to a coastal resource, the public trust, navigational or riparian considerations, or regulatory programs, but can be more readily corrected than major impact activities; or where formal enforcement action is warranted to ensure consistency and compliance with Department regulatory programs.  |
| Minor  | Unauthorized activity that could cause only a minimal adverse impact and does not require substantial restoration of the site, or a violation having no on-site manifestation, such as a failure to file a report, plan or other form required by a permit.  |

Each distinct violation shall then be evaluated in terms of its extent of deviation from the legal requirement using the criteria in Table 2C.

| <b>Table 2C<br/>Extent of Deviation Criteria for Tidal Wetlands,<br/>Structures, Dredging or Fill Violations</b> |  |
|--|--|
| <b>Category</b>  | <b>Extent of Deviation Criteria</b>  |
| Major  | <p>A violation that is substantially inconsistent with legal requirements; examples include:</p> <ul style="list-style-type: none"> <li>➤ Significant violation of a permit or order.</li> <li>➤ Activity that is inconsistent with applicable statutory standards and would not have been authorized by the department.</li> <li>➤ Unauthorized activity that does not modify or reconstruct any previously existing or authorized structure or work.</li> <li>➤ Unauthorized activity that is significantly different in scope and scale from surrounding existing or historical activities.</li> </ul>  |
| Moderate   | <p>Violation that is generally consistent or can be made consistent with legal requirements through a permit authorization process or through modification of the violating activity; examples include:</p> <ul style="list-style-type: none"> <li>➤ Unauthorized activity that might be statutorily consistent and permissible if reconfigured or modified.</li> <li>➤ Unauthorized minor modifications to existing commercial facilities.</li> <li>➤ Significant reconstruction or modification of pre-existing structures which does not significantly change the footprint of the structure.</li> <li>➤ Activity that is not significantly different in scope and scale than surrounding or prior activities.</li> </ul> |
| Minor  | <p>Unauthorized activity that was consistent with applicable statutory standards and would likely have been authorized had a timely and complete application been filed.</p>   |

The gravity-based penalty component for each distinct violation shall comprise the following:

(1) A gravity-based penalty for the first day of violation, which is determined by first locating the penalty range from the appropriate subcell in the penalty matrix in Table 2D. The commissioner shall, upon consideration of all of the potential harm sub-factors evaluated for such violation, set the gravity-based penalty for the first day of violation to an amount within such penalty range;

(2) A gravity-based penalty for each day the violation continued beyond the first day, up to a maximum of one-hundred-eighty days thereafter, which is equal to either: Twenty-five percent of the first day gravity-based penalty for each day such violation continued provided the violation commenced on or before one year prior to the date of issuance of the penalty notice; or, if the violation commenced within one year prior to the date of issuance of the penalty notice, one-hundred percent of the first day gravity-based penalty for each day such violation continued, up to a maximum of thirty days, and twenty-five percent of such first day penalty for each additional day thereafter. If the violation commenced prior to the effective date of these regulations, the first day of violation shall be the first day such violation continued after such effective date; and

(3) At the sole discretion of the commissioner, a gravity-based penalty for each day the violation continued for more than one-hundred-eighty-one days, provided such violation has caused major or moderate damage to a coastal resource. The amount of such gravity-based penalty shall not exceed the number of days the

violation continued beyond one-hundred-eighty-one days multiplied by twenty-five percent of the first day gravity-based penalty.

| <b>Table 2D</b>   |                            |                 |                |
|---|----------------------------|-----------------|----------------|
| <b>Penalty Matrix for Tidal Wetlands, Structures, Dredging or Fill Violations</b> |                            |                 |                |
| <b>POTENTIAL FOR HARM</b>   | <b>EXTENT OF DEVIATION</b> |                 |                |
|   | <b>Major</b>               | <b>Moderate</b> | <b>Minor</b>   |
| <b>Major</b>  | \$720 to \$1,000           | \$570 to \$770  | \$480 to \$600 |
| <b>Moderate</b>   | \$256 to \$480             | \$160 to \$288  | \$100 to \$180 |
| <b>Minor</b>  | \$70 to \$110              | \$50 to \$70    | \$35 to \$50   |

(3) Pesticide Control Violations.

For each distinct violation of chapter 441 of the Connecticut General Statutes, or of any regulation, order or permit administered or issued thereunder, the gravity-based penalty component shall be determined using Table 3A.

| <b>Table 3A</b>  |  |  |
|--|--|--|
| <b>Penalty Schedule for Pesticide Control Violations</b>   |  |  |
| <b>Type of Violation</b>   | <b>Penalty for Minor Extent of Deviation<sup>†</sup></b> | <b>Penalty for Significant Extent of Deviation<sup>‡</sup></b> |
| Commercial application of pesticides without supervisory certification in violation of 22a-54(c)(1) of the Connecticut General Statutes.   | Not a minor deviation.                                   | \$1000 plus \$100 for each subsequent application.             |
| Sale of a restricted use or permit use pesticide by a dealer who has not registered in violation of 22a-56(c) of the Connecticut General Statutes.   | Not a minor deviation.                                   | \$1000 plus \$100 for each additional sale                     |
| Sale, use or distribution of a pesticide that has not been registered in violation of 22a-61(a)(1) of the Connecticut General Statutes.  | Not a minor deviation.                                   | \$800 plus \$100 for each additional sale                      |
| Sale of a restricted use or permit use pesticide to a person who is not registered, certified or who has not obtained a permit in violation of 22a-57 of the Connecticut General Statutes.   | Not a minor deviation.                                   | \$1000 plus \$100 for each additional sale                     |
| Failure of a registered dealer to:<br>Maintain records of the sale of restricted use or permit use pesticides or to allow inspection of such records by the commissioner in violation of section 22a-58 of the Connecticut General Statutes; or submit records to the commissioner in violation of section 22a-66-4 of the Regulations of Connecticut State Agencies; or display restricted use or permit use pesticides in a separate secure area in violation of section 22a-66-4(f) of the Regulations of Connecticut State Agencies. | \$300  | \$1000   |

|   |   |  |
|---|---|--|
| Failure of a certified private applicator to maintain or submit records of the use of restricted use pesticides in violation of section 22a-58 of the Connecticut General Statutes.   | \$100   | \$500  |
| Failure of a certified commercial supervisor to maintain records of the use of pesticides in violation of 22a-58 of the Connecticut General Statutes.   | \$250 plus \$50 for each additional violation                                   | \$750 plus \$50 for each additional violation                                    |
| Refusal to allow an inspection of a place where pesticides may have been used or stored, in violation of section 22a-59 or 22a-61(b)(2) of the Connecticut General Statutes, or refusal to allow inspection of records in violation of section 22a-58 or 22a-61(b)(2) of the Connecticut General Statutes.                        | \$300   | \$1000   |
| Use or sale of a pesticide that has been adulterated or misbranded as defined in section 22a-47 of the Connecticut General Statutes in violation of section 22a-61(a)(5)  | Not a minor deviation.  | \$1000   |
| Detaching, altering, defacing, or destroying any pesticide label in violation of section 22a-61(b)(1) of the Connecticut General Statutes.  | \$250   | \$750  |
| Using a registered pesticide in a manner inconsistent with its labeling in violation of section 22a-61(b)(7) of the Connecticut General Statutes.   | \$750   | \$2500   |
| Advertising or soliciting to perform work that requires a commercial supervisory certification by a person who is uncertified or holds an operator's certification, or performance of such work by a person who holds operator certification in violation of section 22a-61(d) and 22a-61(e) of the Connecticut General Statutes. | \$500 plus \$100 for each additional advertisement, solicitation or performance | \$1000 plus \$100 for each additional advertisement, solicitation or performance |
| Failure to post required notice of a pesticide application, or failure to post signs and provide signs at a retail establishment, or failure to provide other notification in violation of 22a-66a of the Connecticut General Statutes.   | \$75  | \$90   |
| Failure to register or renew a registration of a pesticide application business in violation of section 22a-66c(a) of the Connecticut General Statutes.   | Not a minor deviation.  | \$1000   |
| Failure of a registered pesticide business to notify the commissioner of changes to the registration within 30 day of the change in violation of section 22a-66c(b) of the Connecticut General Statutes.  | \$200   | \$500  |
| Failure to maintain or retain for the required period a pesticide application business record, or failure to include all required items in a pesticide application business record in violation of 22a-66g of the Connecticut General Statutes.   | \$300 plus \$100 for each additional violation                                  | \$1000 plus \$100 for each additional violation                                  |
| Introducing a chemical into the waters of the state to control aquatic organisms without a permit in violation of section 22a-66z of the Connecticut General Statutes.  | \$500   | \$1500   |

|   |  |  |
|---|--|--|
| Failure to comply with a requirement of a permit to apply chemicals to the waters of the state issued under 22a-66z of the Connecticut General Statutes.  | \$500  | \$1000   |
| Failure of a certified supervisor to provide written instructions to a certified operator in violation of section 22a-66-5(g)(2) of the Regulations of Connecticut State Agencies.  | \$250 plus \$100 for each additional application | \$750 plus \$100 for each additional application |
| Failure to obtain operator certification for use of pesticides in other than a supervisory capacity in violation of section 22a-66-5(h) of the Regulations of Connecticut State Agencies.   | \$500  | \$1000   |
| Failure of a pesticide application business to employ a certified supervisory applicator in violation of section 22a-66f of the Connecticut General Statutes.   | \$500  | \$1000   |
| Application of pesticides or fertilizers by aircraft without a landowner's permit; or application of pesticides or fertilizers by aircraft without an aircraft applicator's certificate in violation of section 22a-54(e)(1) of the Connecticut General Statutes. | \$500  | \$1500   |
| Failure to comply with a requirement of section 22a-66-7 of the Regulations of Connecticut State Agencies in violation of a permit or license to apply pesticides or fertilizer by aircraft.  | \$500  | \$1000   |
| Failure to have check valves or other anti-siphon devices on filler hoses used to draw water for mixing pesticides or failure to cover filler hoses while spraying pesticides in violation of section 22a-66-3 of the Regulations of Connecticut State Agencies   | \$300  | \$1000   |

† Minor deviation means minimal noncompliance with a legal requirement in that the respondent deviated somewhat from the requirement, but all or most of the important aspects of the requirement were met, or were met after minimal delay.

‡ Significant deviation means noncompliance with a legal requirement that is not a minor deviation.

**(d) Gravity-Based Penalty Adjustments.**

For each distinct violation, gravity-based penalty adjustments shall be determined as follows:

(1) Good Faith Efforts to Comply.

A gravity-based penalty component may be adjusted downward by as much as 25% depending upon whether or not, in the sole judgment of the commissioner, the respondent had taken all steps or followed all procedures necessary or appropriate to comply or to correct the violation prior to the department's discovery of such violation. However, the commissioner need not adjust such gravity-based penalty in accordance with this provision if the respondent failed to take reasonable and prompt measures to fully comply upon respondent's discovery of such violation.

(2) History of Noncompliance.

A gravity-based penalty component may be adjusted upward by as much as 25% if the respondent has a history of a prior violation. In determining the amount of upward penalty adjustment, the commissioner shall consider all known violations,

any prior violations by the respondent of statutes, regulations, orders, permits or licenses administered, adopted or issued by the commissioner, and any judgments or orders entered by the federal government or any state or municipality against the respondent.

(3) Ability to Pay.

The gravity-based penalty component, plus any gravity-based penalty adjustments under subdivisions (1) and (2) of this section, may be adjusted based on the economic and financial conditions of the violator. The commissioner may deem a respondent to be unable to pay a gravity-based penalty if payment of such penalty would interfere with the respondent's financial ability to come into compliance or force the respondent out of business. It shall be the respondent's sole burden to assert any claim of inability to pay and to submit all documents that the commissioner reasonably believes are necessary to evaluate such claim. Any penalty adjustment for a demonstrated inability to pay may be limited if the:

(1) Violation is chronic or repeat, or causes or has the potential to cause serious harm to the environment;

(2) Respondent refuses to correct a violation; or

(3) Respondent is a business entity that is no longer doing business.

Further, any of the following does not necessarily constitute an inability to pay: Potential reduction of manager or officer salaries or employee bonuses; potential reduction of shareholder dividends; limited cash flow, but respondent is able to raise money through borrowing, selling assets, or other steps without incurring extraordinary burdens.

(Adopted effective May 29, 2007)

**Sec. 22a-6b-9. Assessment of administrative civil penalty—penalty recalculation**

(a) After the issuance of a penalty notice, the commissioner may recalculate the penalty assessed in such notice based on the commissioner's consideration of new or additional information pertaining to the veracity of the alleged violation or the accuracy of the assessed penalty, or based on the commissioner's consideration of the economic and financial condition of the respondent following the respondent's written claim of inability to pay.

(b) If the commissioner recalculates the penalty and the recalculated penalty can not be resolved by agreement, the commissioner may issue an amended penalty notice that assesses the recalculated penalty and states the respondent's right to request a hearing on such amended notice within 30 days after respondent's receipt of such notice. The penalty assessed in any amended penalty notice shall not be less than the economic benefit of noncompliance.

(Adopted effective May 29, 2007)

**Sec. 22a-6b-10. Settlement conferences**

(a) Within 30 days after receipt of a respondent's request for hearing on a penalty notice, the commissioner may schedule a settlement conference; such settlement conference shall be conducted by a referee. The purpose of such settlement conference shall be to attempt to resolve such penalty notice without the need for a hearing.

(b) If the respondent to a penalty notice fails without good cause to appear at a scheduled settlement conference, the assigned hearing officer shall schedule a hearing on such penalty notice.

(c) Promptly upon completion of a settlement conference at which the respondent appears, but in any event no later than seven days thereafter, the assigned hearing

officer shall, with respect to any penalty notice covered or scheduled to be covered at such conference, either issue a notice of hearing date on the penalty notice, or if the referee recommends to the assigned hearing officer that resolution of the dispute without a hearing is likely, the hearing officer may issue a notice of the date by which a consent order signed by the respondent to resolve such notice shall be submitted to the hearing officer by the parties. If the parties fail to submit such consent order by the established date, the hearing officer shall promptly issue a notice of hearing date on the penalty notice.

(Adopted effective May 29, 2007)

**Sec. 22a-6b-11. Assessment of administrative civil penalty—resolution of penalty notice prior to completion of settlement conference**

To encourage early resolution of a penalty notice, if the respondent demonstrates to the commissioner's satisfaction that the respondent has, prior to completion of the settlement conference, either corrected a violation alleged in such penalty notice, or agreed to and is in compliance with a final order from the commissioner to correct such violation, the assessed penalty for such violation shall be reduced by 20%, provided that the respondent has, prior to completion of the settlement conference, waived its right to a hearing on all parts of the penalty notice pertaining to such violation and remitted payment of the associated administrative civil penalty for such violation. The total penalty reduction granted under this section for a single penalty notice shall not exceed \$20,000.

(Adopted effective May 29, 2007)

**Sec. 22a-6b-12. Assessment of administrative civil penalty—resolution of penalty notice after settlement conference but prior to hearing**

To encourage resolution of a penalty notice prior to hearing, if the respondent demonstrates to the commissioner's satisfaction that the respondent has, prior to hearing, either corrected a violation alleged in a penalty notice, or agreed to and is in compliance with a final order from the commissioner to correct such violation, the assessed penalty for such violation shall be reduced by 10%, provided that respondent has, after settlement conference and prior to hearing, waived its right to a hearing on all parts of the penalty notice pertaining to such violation and remitted payment of the associated administrative civil penalty for such violation after the settlement conference but prior to a hearing on said penalty notice. The total penalty reduction granted under sections 22a-6b-11 and 22a-6b-12 combined shall not exceed \$20,000 for a single penalty notice.

(Adopted effective May 29, 2007)

**Sec. 22a-6b-13. Assessment of administrative civil penalty—resolution of penalty notice by consent order**

In negotiating a final resolution of a penalty notice, the commissioner may mitigate a penalty upon his consideration of any of the following:

(1) The risks and costs associated with further litigation and whether such litigation would best serve the public interest.

(2) Any other factors the commissioner deems appropriate, including voluntary measures the Respondent agrees to undertake to prevent pollution or enhance or preserve natural resources.

(Adopted effective May 29, 2007)

**Sec. 22a-6b-14. Final decision on a penalty notice**

The commissioner shall render a final decision on a penalty notice as follows:

(1) If the respondent is not found to have committed a violation alleged in a penalty notice, there shall be no penalty assessed for such alleged violation.

(2) If the respondent is found to have committed a violation alleged in a penalty notice, the penalty assessed for such violation shall be the penalty stated in such notice, except that the commissioner shall adjust an administrative civil penalty in accordance with both the evidence and the provisions of the department's Administrative Civil Penalty Regulations, provided that the adjusted penalty is not greater than the penalty stated in such notice.

(Adopted effective May 29, 2007)

**Sec. 22a-6b-15. Payment of penalties**

Any penalty paid under the department's Administrative Civil Penalty Regulations shall be remitted by bank check or certified check payable to "Treasurer, State of Connecticut." The check shall indicate on its face "Administrative Civil Penalty" and the action or docket number of the penalty notice under which it is paid. The check shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Administration, 79 Elm Street, Hartford, CT 06106.

(Adopted effective May 29, 2007)