

COLUMBIA RIVER GORGE COMMISSION

Chapter 350

Division 30

Enforcement

As Amended Through May 1, 2011

350-30-005. Purpose.

The purpose of this division is to establish procedures and criteria for enforcement of P.L. 99-663 by the Commission as set forth in section 15 of the Scenic Area Act.

350-30-010. Definitions.

For the purpose of this division the following definitions apply unless the context requires otherwise:

(1) "Commission" means the Columbia River Gorge Commission established by Chapter 499, Washington Laws of 1987 and Chapter 14, Oregon Laws of 1987.

(2) "Continuing violation" means continuing activity which violates any law, rule, implementation measure, ordinance or order under P.L. 99-663. For example, continued operation of a rock quarry after receipt of a notice of alleged violation is a continuing violation.

(3) "De minimis violation" means a violation of the law that is essentially minor, readily correctable, not repeated and with cooperative parties.

(4) "Director" means the Executive Director of the Columbia River Gorge Commission or staff designee.

(5) "Implementation measure" means any ordinance, regulation or order adopted by the Columbia River Gorge Commission or a county which carries out the Act, the management plan or a land use ordinance.

(6) "Interim guidelines" means the guidelines adopted pursuant to section 10(a) of P.L. 99-663.

(7) "Land use ordinance" means any ordinance adopted by a county or the Commission pursuant to P.L. 99-663, and includes any amendment to, revision of, or variance from such ordinance.

(8) "Management plan" means the scenic area management plan adopted pursuant to section 6 of P.L. 99-663.

(9) "Violation" means failure to comply with any law, rule, implementation measure, ordinance or order under P.L. 99-663.

350-30-015. Civil Penalty.

- (1) Any person who willfully violates any of the following may incur a civil penalty:
 - (a) P.L. 99-663;
 - (b) the management plan;
 - (c) a land use ordinance;
 - (d) an implementation measure; or
 - (e) any order issued by the Commission or the Director.

(2) The Commission may not assess a civil penalty under section 15(a)(3) of P.L. 99-663 unless it provides notice and an opportunity for a public hearing to the person that the Commission alleges to have violated one of the measures listed in subsection (1) of this section.

- (3) Each day of continuing violation is a separate and distinct violation.

350-30-020. Investigation.

(1) The Director shall investigate alleged violations of the measures listed in subsection 1 of 350-30-015 of this Division.

(2) The Director may inspect the subject property if necessary to conduct an investigation under subsection (1) of this section.

350-30-025. De Minimis Violation.

If the Director believes a violation has occurred but it is of a de minimis nature, readily correctable, not repeated and with cooperative parties, the Director should work with the landowner to resolve the matter through a new development review application, modification or removal of a building or structure, or other appropriate means. The Director shall periodically report to the Commission about resolutions to de minimis violations.

350-30-030. Notice of Alleged Violation.

(1) If the violation is not de minimis, the Director shall serve written notice of violation on the alleged violator by personal service or by registered or certified mail. The notice shall include:

- (a) a plain statement describing the alleged violation;
- (b) the provision of P.L. 99-663, the management plan, the land use ordinance, the implementation measure or the order alleged to have been violated;

- (c) the legal and common description of the subject property;
 - (d) the proposed disposition of the matter through either 350-30-050 through 350-30-060 or 350-30-070 including the recommended penalty to be imposed (if any) and the criteria from 350-30-090 upon which the penalty is based;
 - (e) a statement that the alleged violator shall file an answer within 14 days after receipt of the notice of violation;
 - (f) a copy of 350-30-040 which prescribes how to file an answer; and
 - (g) a statement that if resolution is not reached through 350-30-050 through 350-30-060 the Commission will consider the alleged violation at a contested case hearing which may result in the entry of a final order imposing a civil penalty based upon a prima facie case made on the record, whether or not the alleged violator participates.
- (2) Service shall be deemed complete three days after written notice is mailed to:
- (a) the alleged violator; or
 - (b) any person designated by law as competent to receive service of a summons or notice for the alleged violator.

(3) Notice sent by registered or certified mail to a person at the last known address of the person is presumed to have reached the person within three days after mailing.

350-30-040. Answer.

(1) The alleged violator shall file an answer within 14 days of receipt of a notice of violation but it must be received by the Director within the 14 days allowed.

(2) The answer shall agree or disagree with all factual matters and shall affirmatively allege any and all affirmative claims or defenses and the reasoning in support thereof. The answer may include proposed measures for resolution of the matter through 350-30-050 through 350-30-060 or 350-30-070 and any reason the Commission should modify the penalty recommended.

350-30-050. Resolution Through Agreement.

The Director may seek to resolve or settle a alleged violation. Any proposed resolution must be presented to and approved by the Commission as provided in 350-30-060.

350-30-060. Hearing on Proposed Resolution Through Agreement.

- (1) The hearing shall be conducted using the following procedure:

- (a) The Director shall provide a brief summary of the nature of the case, the proposed resolution and the key legal issues.
- (b) The Director shall provide any other information required along with his recommendation.
- (c) The alleged violator or the alleged violator's representative shall be given a reasonable opportunity to be present and to address the Commission.
- (d) The Commission may request further information from the Director or the alleged violator.
- (e) The Commission shall decide whether to accept, reject or modify the proposed resolution.
- (f) If rejected, the matter shall be reset for a contested case hearing under 350-30-070.

350-30-070. Hearing on Contested Case.

(1) A violation that is not resolved through 350-30-050 to 350-30-060 shall be conducted as a contested case.

(2) The rules governing the Commission's administrative procedure (350-16) shall govern the case.

350-30-080. Order.

(1) The Commission shall issue a final order. The order shall be served by personal delivery or certified or registered mail. If served by mail, the order shall be deemed received three days after mailing.

(2) The order shall specify:

- (a) the resolution of the violation (including any consent decree);
- (b) whether a penalty is imposed and the amount of such penalty; and
- (c) any other conditions or requirements.

(3) The order shall be final for purposes of judicial review.

350-30-090. Penalty Criteria.

(1) In determining the amount of a civil penalty, the following factors shall be considered:

- (a) whether the person or entity has violated the P.L. 99-663 management plan, a land use ordinance, an implementation measure or an order in the past;
 - (b) whether the person or entity has undertaken measures to remedy the violation or mitigate harm resulting from the violation;
 - (c) the nature and seriousness of the violation; and
 - (d) whether the violation is repeated or continuous, or the person or entity has had prior violations.
- (2) No penalty assessed under this division may exceed \$10,000 for each violation.

350-30-100. Summary Order.

Where an imminent threat exists to resources protected under the law and/or to public health, safety or welfare, the Director may issue a summary order requiring the alleged violator to promptly stop work or take other necessary action pending a notice of alleged violation and a contested case hearing before the Commission under 350-30-070.

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