

**STATE OF RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Eugene K. D’Allesandro, Jr.**

**FILE NO.: OCI-FW-17-140**

NOTICE OF VIOLATION

**A. INTRODUCTION**

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

**B. ADMINISTRATIVE HISTORY**

On October 17, 2017, RIDEM inspected the property that is the subject of this Notice of Violation (“NOV”), and RIDEM’s inspector spoke with Respondent at the time of the inspection. The inspector advised Respondent that the activities RIDEM observed were occurring within freshwater wetlands and Respondent did not have a permit from RIDEM to undertake these activities. On 17 January 2018, RIDEM issued a Notice of Intent to Enforce (“NIE”) to Respondent for the violations that are the subject of the NOV. The NIE required specific actions to correct the violations by 30 September 2018. On or about 10 April 2018, RIDEM received a letter from Respondent’s consultant in response to the NIE. The letter stated that Respondent intended to comply with the NIE. Respondent did not request a restoration deadline extension at any time. On 20 May 2021, RIDEM inspected the property, and RIDEM’s inspector spoke with Respondent at the time of the inspection. The inspection revealed activities undertaken in freshwater wetlands that were not present at the time the NIE was issued and represent additional new violations. As of the date of the NOV, Respondent has not complied with the NIE and has not resolved the additional new violations.

**C. FACTS**

- (1) The properties are located between 280 feet and 1,300 feet east/southeast of the eastern terminus of Tulip Hill Road, at House Number 4 (Tulip Hill Rd), between 630 feet and 1,600 feet east/southeast of the intersection of Tulip Hill Road and Apple Blossom Drive, on Assessor’s Plat 55, Lot 175 (“Lot 175”) **and** between 280 feet and 740 feet south/southwest of the southern terminus of Poppy Hill Drive, between 1,100 feet and 1,700 feet southeast of the intersection of Poppy Hill Drive and Apple Blossom Drive, on Assessor’s Plat 55, Lot 34 (“Lot 34”) in Johnston, Rhode Island.
- (2) On 2 August 2013, Assessor’s Plat 55, Lot 19 (“Lot 19”) was subdivided to create Lot 175 and Assessor’s Plat 55, Lot 176.
- (3) Respondent owns Lot 175. Respondent acquired Lot 175 on 29 May 2015.

- (4) John Lamothe and Alyssa Lamothe (“Adjacent Owners”) own Lot 34. Adjacent Owners acquired Lot 34 on 26 March 2021.
- (5) On 3 April 2013, Insignificant Alteration Permit number 12-0218 (“Permit”) was issued by RIDEM to the former owner of Lot 175 to alter freshwater wetlands on Lot 175.
- (6) On 27 August 2013, the Permit was recorded in the land evidence records of Johnston, Rhode Island on Book 2316, Pages 175 - 178 (“Recorded Permit”).
- (7) On 1 July 2017, the Permit expired.
- (8) On 17 October 2017, RIDEM inspected Lot 175 and Lot 34 (“October Inspection”) and spoke with Respondent at the time of the inspection. The inspection revealed the following:
  - (a) Clearing, filling (with at least sand, soil material, stones/ boulders, and slash), grading and creating surface disturbance within a Stream (“Stream”). These activities resulted in the alteration of approximately 1050 linear feet of freshwater wetland.
  - (b) Clearing, filling (with at least sand, soil material, stones/ boulders, and slash), grading and creating surface disturbance within Swamp (“Swamp”), which is also encompassed by 100-Foot Riverbank Wetland (“RBW”). These activities resulted in the alteration of approximately 46,900 square feet (1.08± acres) of freshwater wetland.
  - (c) Clearing, filling (with at least soil material), grading and creating surface disturbance within a Forested Wetland, eliminating this entire wetland feature from the landscape. These activities resulted in the alteration of approximately 4,000 square feet of freshwater wetland.
  - (d) Clearing, filling (with at least soil material and stones), grading and creating surface disturbance within a second Forested Wetland (“2<sup>ND</sup> Forested Wetland”), partially eliminating this wetland feature from the landscape. These activities resulted in the alteration of approximately 2,700 square feet of freshwater wetland.
  - (e) Clearing, filling (with at least soil material), grading and creating surface disturbance within an Area Subject to Storm Flowage (“ASSF”) eliminating this entire wetland feature from the landscape. The ASSF had connected the Forested Wetland and 2<sup>ND</sup> Forested Wetland. These activities resulted in the alteration of approximately 185 linear feet of freshwater wetland.

- (f) Clearing, filling (with at least sand, soil material, stones/ boulders, and slash), grading and creating surface disturbance within the RBW, portions of which also include the Swamp and 50-foot Perimeter Wetland (“PW”). These activities resulted in the alteration of approximately 110,300 square feet (2.53± acres) of freshwater wetland.
- (g) Elimination of a stormwater infiltration basin (“Basin”) installed on the Property as required by the Permit.

RIDEM’s inspector advised Respondent at the time of the inspection of the presence of the freshwater wetlands on Lot 175 and Lot 34 and that Respondent should have known the work was undertaken in freshwater wetlands because of the Recorded Permit.

- (9) On 20 May 2021, RIDEM inspected Lot 175 and Lot 34 and spoke with Respondent at the time of the inspection. The inspection revealed the following activities that were not present during the October Inspection (“New Activities”):
  - (a) Excavating and creating soil disturbance and erosion/sedimentation within the Stream, also resulting in erosion and sedimentation within wetlands downstream. This activity resulted in the alteration of approximately 100 linear feet of freshwater wetlands.
  - (b) Clearing, excavating, filling, grading, and creating disturbance within the Swamp (including the RBW). This activity resulted in the alteration of approximately 3,000 square feet of freshwater wetlands.
  - (c) Clearing, excavating, filling, stumping, grading, and creating disturbance within the PW and the RBW. This activity resulted in the alteration of approximately 10,000 square feet of freshwater wetlands.
  - (d) Constructing a portion of pool apron and fencing in the RBW. This activity has resulted in the alteration of approximately 3,000 square feet of freshwater wetlands.
- (10) On 15 July 2021 and 12 August 2021, RIDEM inspected Lot 175 and Lot 34 and spoke with Respondent at the time of the inspections. The inspections revealed that restoration of the some of the altered freshwater wetlands was completed, but more work was required to fully restore the freshwater wetlands.
- (11) On 7 December 2021, RIDEM received a plan titled *Proposed Wetland Restoration and Mitigation Plan* submitted by Natural Resources Services, Inc. on behalf of Respondent. The plan generally proposes to create more wetland associated with the Forested Wetland to mitigate for the eliminated 2<sup>ND</sup> Forested Wetland. The plan does not depict restoration of any other wetlands on the Property.

- (12) The activities described in subsections C (8) and C (9) above were undertaken in non-compliance with the Permit and well beyond the limits of disturbance shown on the plans approved with the Permit.
- (13) The activities described in subsection C (8) and C (9) above were not exempt in accordance with Rhode Island's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (250-RICR-150-15-1) [effective July 16, 2014 to Current] ("FWW Rules").
- (14) Respondent did not receive a permit from RIDEM to alter the freshwater wetlands on Lot 175 and Lot 34 in the areas described in subsections C (8) and C (9) above.

D. VIOLATION

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **R.I. Gen. Laws Section 2-1-21** – prohibiting activities which may alter freshwater wetlands without a permit from RIDEM.
- (2) **FWW Rules, Part 1.5(A)(1)** – prohibiting activities which may alter freshwater wetlands without a permit from RIDEM, unless the activity is exempt in accordance with Part 1.6.

E. ORDER

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **IMMEDIATELY** cease and desist from any further alteration of the above-described freshwater wetlands.
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

**RESTORATION REQUIREMENTS**

- (a) If not already completed, properly install a continuous uninterrupted line of silt fence, staked haybales, or biodegradable fiber logs (filter socks) between all unauthorized altered areas and any adjacent undisturbed wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the completion of the required wetland restoration activities, and until such time that all the surrounding areas are properly stabilized. Prior to performing required restoration activities within or immediately adjacent to Stream features, properly install staked haybale check-dams immediately downstream of intended work areas and at 50-foot intervals for an appropriate distance downstream of the work limits (as directed by RIDEM). As restoration progresses (in a downstream direction), additional haybale check-dams must

be installed as needed. Haybale check-dams must remain in place in all Stream locations during and following the completion of restoration activities. At the discretion and direction of RIDEM, additional soil erosion and sediment controls must be installed, as deemed necessary, to protect all freshwater wetlands.

- (b) Remove all unauthorized fill material (i.e., at least at least sand, soil material, stones/ boulders, and slash) from the affected Stream, Swamp, ASSF, Forested Wetlands, PW, and RBW areas. Within the Stream and ASSF, all fill must be properly removed to re-establish the original beds and side slopes of the subject watercourses, to allow for unaltered/un-diverted surface flows (generally west to east) throughout the areas of concern, to a point where the natural undisturbed channel or other wetland feature is reached. Within the altered Swamp and Forested Wetlands, all non-native fill material must be removed down to the original elevations that were present prior to the alterations, to the grades at which organic, hydric surface soils are present. When performing restoration activities within the altered Stream features, work must begin at the furthest upstream location where unauthorized alterations took place, then proceed downstream in an appropriate manner. Within the altered portions of the PW and RBW, fill must be removed down to the original (pre-alteration) grade, to establish a gradual stable slope throughout the areas of concern, to match the surface elevations of the undisturbed surrounding areas. All fill material that is removed must be deposited in an appropriate upland location, outside all freshwater wetlands **Prior to proceeding to the next restoration step, all wetlands from which fill has been removed must first be inspected by RIDEM, to confirm that the correct restoration grades have been achieved and an adequate surface substrate material and hydrology is present.**
- (c) Following the removal of the fill material from the Stream and ASSF, all disturbed surfaces over the bottom (bed) and side slopes of the restored channels must be promptly seeded with a proper wetland seed mixture and entirely covered with a blanket of jute mesh or other bio-degradable, erosion control matting material to provide immediate stabilization. Following fill removal, all resulting disturbed surface areas within the restored Swamp and Forested Wetlands must also be seeded with an appropriate wetland seed mixture. A thick mat of spread straw mulch, which is free of any contaminants that could promote the spread of invasive plant species, must also be applied over all the disturbed surfaces within the restored Swamp and Forested Wetlands to provide immediate stabilization.
- (d) All required site work within the Stream and Swamp features must be performed during an **acceptable low-flow period** (generally July 1 through October 31).

- (e) All disturbed surface areas resulting from fill removal within the restored PW and RBW shall be covered, if necessary (at the direction of RIDEM), with plantable soil (4 inches minimum) and seeded with an appropriate wildlife conservation seed mixture. A thick mat of straw mulch, which is free of any contaminants that could promote the spread of invasive plant species, must also be applied over all disturbed surfaces to provide stabilization. As needed, and **at the discretion and direction of RIDEM**, an appropriate biodegradable erosion control blanket/matting material (e.g., jute mesh, coconut fiber matting material, excelsior matting material, etc.) must be applied to all steep slopes and/or erosion-sensitive surfaces, to prevent further erosion impacts to adjacent restored wetlands.
- (f) Upon the completion of fill removal operations, RIDEM will inspect the Swamp and Forested Wetlands and make an assessment on the need for plantings in these areas. If directed by RIDEM, plantings shall be installed as follows:

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion 5 feet on center, at least 3 feet tall after planting, throughout the wetland areas described above. The shrubs to be planted within these wetland areas must be obtained from nursery stock that has been raised in hydric conditions. If necessary, to improve survivability, required tree and shrub plantings may be installed within small, raised mounds (slightly elevated only) of high-organic plantable soil material (only). Shrub species must include an equal distribution of at least 3 of the following selections:

Red osier dogwood, *Cornus stolonifera*  
Elderberry, *Sambucus canadensis*  
Northern arrowwood, *Viburnum recognitum*  
Winterberry, *Ilex verticillata*  
Highbush blueberry, *Vaccinium corymbosum*  
Spicebush, *Lindera benzoin*  
Swamp azalea, *Rhododendron viscosum*  
Speckled alder, *Alnus rugosa*  
Smooth alder, *Alnus serrulata*  
Red chokeberry, *Aronia arbutifolia*  
Buttonbush, *Cephalanthus occidentalis*  
Maleberry, *Lyonia lingustrina*  
Swamp Rose, *Rosa palustris*

- (g) Plant **all** unauthorized altered areas within the PW and RBW with trees and shrubs, as follows:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, at least 4 feet tall after planting, throughout the areas defined above. Tree species must include an equal distribution of at least 4 of the following selections:

White pine, *Pinus strobus*  
Northern white cedar, *Thuja occidentalis*  
Red maple, *Acer rubrum*  
Box elder (ashleaf maple), *Acer negundo*  
Black cherry, *Prunus serotina*  
Black gum, *Nyssa sylvatica* (closer to Swamp limits)  
White oak, *Quercus alba*  
Northern red oak, *Quercus rubra*  
Sassafras, *Sassafras albidum*  
Gray birch, *Betula populifolia*  
Black birch, *Betula lenta*  
American beech, *Fagus grandifolia*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion 5 feet on center, 3 feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least 4 of the following selections:

Mountain laurel, *Kalmia latifolia*  
Giant rhododendron, *Rhododendron maximum* (shaded areas only)  
Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*  
Silky dogwood, *Cornus amomum*  
Arrowwood (southern), *Viburnum dentatum*  
American cranberrybush, *Viburnum trilobum*  
Mapleleaf viburnum, *Viburnum acerifolium*  
Inkberry, *Ilex glabra*  
Highbush blueberry, *Vaccinium corymbosum*  
Lowbush blueberry, *Vaccinium angustifolium*  
Sweet pepperbush, *Clethra alnifolia*  
Speckled alder, *Alnus rugosa* (closer to Swamp limits)  
Black chokeberry, *Aronia melanocarpa*  
Witchhazel, *Hamamelis virginiana*

- (h) In addition, balled and burlapped or transplanted evergreen screening tree species must be planted in a straight line, 8 feet on-center (apart), 5 to 6 feet tall after planting, along the outer (landward) edge of the restored RBW. The tree species to be utilized for this screening line (described above) must be chosen from the following selections:

Northern white cedar, *Thuja occidentalis*

White pine, *Pinus strobus*

White spruce, *Picea glauca*

- (i) If any of the required plantings fail to survive at least 1 full year from the time they have been planted, you shall be responsible for replanting and maintaining the same plant species until such time that survival is maintained over 1 full year.
- (j) All disturbed surfaces within and surrounding the affected/restored freshwater wetlands must be properly seeded and stabilized with a mat of loose straw mulch (as described above). If necessary, very steep, or extremely unstable surfaces must be covered with an appropriate erosion control matting of some type (e.g., excelsior matting or jute mesh).
- (k) Upon stabilization of all disturbed areas, all non-biodegradable erosion and sediment controls must be removed from the freshwater wetland. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area, outside of all freshwater wetlands.
- (l) **All restored freshwater wetland areas must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations or improvements are authorized in any wetland area on the subject property without first obtaining a valid permit from RIDEM.**
- (m) Construct the Basin, including the associated stone check dam, in accordance with the plans approved with the Permit.
- (n) All fill removal, grading, and site stabilization activities within the Swamp and Forested Wetlands must be completed on or before **31 October 2022** (to allow time for restoration plant procurement, as needed). All remaining restoration requirements outlined above (including restoration plant installation) must be completed on or before **30 April 2023**.



- (o) The alterations to freshwater wetlands caused by the New Activities must also be resolved by completing one of the following:
- (i) Remove all components of the driveway, maintained lawn area, pool skirt, and associated improvements from the affected portions of the RBW. All removed fill materials must be deposited in an appropriate upland location, outside of all freshwater wetlands. The resulting disturbed areas must be further restored as described in Restoration Requirements (2)(b), (e), (g), and (h) through (l) above. This restoration work must be completed on or before **30 April 2023**.

**OR**

- (ii) Within 60 days of the receipt of the NOV, submit a complete permit application, along with the appropriate fee, to RIDEM's Office of Water Resources in accordance with the Wetland Regulations. The application shall be subject to RIDEM's review and approval. Within 30 days of receiving a notification of deficiencies, submit to RIDEM the information necessary to address the deficiencies. Submission of an application does not guarantee approval. In addition, please be advised that the application submission should be revised in a manner that will avoid and minimize impacts to the RBW to the greatest degree possible. If a permit is not obtained on or before **31 March 2023**, the RBW must be restored in its entirety on or before **30 April 2023**, as described in Restoration Requirement (2)(o)(i) above.

F. **PENALTY**

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

**\$85,000**

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Regulations") and must be paid to RIDEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:

- (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection  
235 Promenade Street, Suite 220  
Providence, RI 02908-5767.

- (b) By wire transfer in accordance with instructions provided by RIDEM.

- (3) Penalties assessed against Respondent in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

G. RIGHT TO ADMINISTRATIVE HEARING

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before RIDEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b).
- (b) Be **RECEIVED** by RIDEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk  
RIDEM - Administrative Adjudication Division  
235 Promenade Street, Suite 350  
Providence, RI 02908-5767.

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b).
  - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of Rhode Island's *Rules and Regulations for the Administrative Adjudication Division* (250-RICR-10-00-1).
- (2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmit, Esquire  
RIDEM - Office of Legal Services  
235 Promenade Street, Suite 425  
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before RIDEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).

- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the Town of Johnston, Rhode Island wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 2-1-24, as is or as amended.
- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Christina Hoefsmit of RIDEM's Office of Legal Services at (401) 222-6607 or at [christina.hoefsmit@dem.ri.gov](mailto:christina.hoefsmit@dem.ri.gov). All other inquiries should be directed to David E. Chopy of RIDEM's Office of Compliance and Inspection at (401) 222-1360, ext. 2777400 or at [david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov).

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

By: \_\_\_\_\_  
David E. Chopy, Administrator  
Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
the within Notice of Violation was forwarded to:

Eugene K. D'Allesandro, Jr.  
4 Tulip Drive  
Johnston, RI 02919

by Certified Mail.

\_\_\_\_\_



# ADMINISTRATIVE PENALTY SUMMARY

Program: Freshwater Wetlands  
 File No.: OCI-FW-17-140  
 Respondent: Eugene K. D'Allesandro, Jr.

<b>GRAVITY OF VIOLATION</b>					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) and D (2) – Wetland Alterations to the Stream – Fact C(8)(a)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) – Wetland Alterations to the Swamp – Fact C(8)(b)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) – Wetland Alterations to the Forested Wetland – Fact C(8)(c)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) – Wetland Alterations to the 2 <sup>ND</sup> Forested Wetland – Fact C(8)(d)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) – Wetland Alterations to the ASSF – Fact C(8)(e)	Type I <i>(\$10,000 Max. Penalty) *</i>	Moderate	\$2,500	1 violation	\$2,500
D (1) and D (2) – Wetland Alterations to the RBW – Fact C(8)(f)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) – Elimination of Basin – Fact C(8)(g)	Type I <i>(\$10,000 Max. Penalty) *</i>	Moderate	\$2,500	1 violation	\$2,500
D (1) and D (2) – Wetland Alterations to the Stream – Fact C(9)(a)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000

## GRAVITY OF VIOLATION

SEE ATTACHED "PENALTY MATRIX WORKSHEETS."

VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) and D (2) – Wetland Alterations to the Swamp – Fact C(9)(b)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) – Wetland Alterations to the PW and RBW – Facts C(9)(c) and C (9)(d)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
<b><i>SUB-TOTAL</i></b>					<b>\$85,000</b>

\*Maximum Penalties represent the maximum penalty amounts per violation.

## ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE, OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondent has enjoyed economic benefit from the noncompliance alleged in this enforcement action. The amount of this economic benefit, however, cannot be quantified.

## COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that RIDEM has not incurred any additional or extraordinary costs during the investigation, enforcement, and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$85,000**

# PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to the Stream – Fact C(8)(a)

VIOLATION NOs.: D (1) and D (2)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u>      </u> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
<b>DEVIATION FROM THE STANDARD</b> <small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered and eliminated portions of the Stream, through clearing, filling (with at least sand, soil material, stones/boulders, and slash), grading, and creating soil disturbance. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> Prior to the unauthorized alterations, the portions of the Stream that are the subject of the NOV were entirely undisturbed, containing a surface watercourse surrounded by vegetated (woodland) habitat. The Stream is visible on several years of aerial photographs.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – approximately 4½ years. RIDEM first became aware of the alterations on October 17, 2017 when RIDEM inspected the Property.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 1,050 linear feet of Stream channel.</li> </ol> <p style="text-align: right;">(continued)</p>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. RIDEM issued a permit to the former owner of the Property to alter freshwater wetlands on the Property. The permit was recorded in the land evidence records on August 27, 2013. The plans associated with the permit clearly showed the Stream, and the permit clearly stated that no alterations to the wetlands were allowed (other than what was approved through the permit) without approval by RIDEM. Respondent acquired the Property on May 29, 2015, and Respondent knew or should have known of the recorded permit. On or about April 10, 2018, RIDEM received a letter from Respondent's consultant in response to the NIE. The letter stated that Respondent intended to comply with the NIE. Respondent did not request a restoration deadline extension at any time. Respondent has taken no steps to mitigate the noncompliance, despite receiving the NIE that required Respondent to restore the Stream.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands, including the Stream, were present on the Property and had knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The FWW Act allows RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing or reckless. The alterations to the Stream were knowing and willful.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500



# PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to the Swamp – Fact C(8)(b)

VIOLATION NOS.: D (1) and D (2)

<b>TYPE</b>		
<p><u>  </u> <b>X</b> <u>  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u>  </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u>  </u> <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by clearing, filling (with at least sand, soil material, stones/ boulders, and slash), grading and creating surface disturbance within Swamp, which is also encompassed by RBW. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> Prior to the unauthorized alterations, the Swamp and RBW that is the subject of the NOV was entirely undisturbed, comprised of mature woodland (forest/shrub) habitat.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – approximately 4½ years. RIDEM first became aware of the alterations on October 17, 2017 when RIDEM inspected the Property.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 46,900 square feet (1.08 ± acres).</li> </ol>		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. RIDEM issued a permit to the former owner of the Property to alter freshwater wetlands on the Property. The permit was recorded in the land evidence records on August 27, 2013. The plans associated with the permit clearly showed the Swamp and RBW, and the permit clearly stated that no alterations to the wetlands were allowed (other than what was approved through the permit) without approval by RIDEM. Respondent acquired the Property on May 29, 2015, and Respondent knew or should have known of the recorded permit. On or about April 10, 2018, RIDEM received a letter from Respondent’s consultant in response to the NIE. The letter stated that Respondent intended to comply with the NIE. Respondent did not request a restoration deadline extension at any time. On December 7, 2021, RIDEM received a letter from Respondent’s consultant on the actions taken to comply with the NIE. RIDEM’s review of the letter revealed that Respondent performed some restoration within the Swamp and RBW (in the form of fill removal) to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands, including the Swamp and RBW, were present on the Property and had knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The FWW Act allows RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing or reckless. The alterations to the Swamp and RBW were knowing and willful.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

# PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to the Forested Wetland – Fact C(8)(c)

VIOLATION NOs.: D (1) and D (2)

<b>TYPE</b>		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by clearing, filling (with at least soil material), grading and creating surface disturbance within a Forested Wetland, eliminating this entire wetland feature from the landscape. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> Prior to the unauthorized alterations, the Forested Wetland that is the subject of the NOV was entirely undisturbed, comprised of mature woodland (forest/shrub) habitat. In 2015 the Forested Wetland was cleared of woody vegetation in its interior and around the northern and western sides. Surface water was still present in 2015, so it had not yet been filled.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – approximately 4½ years. RIDEM first became aware of the alterations on October 17, 2017 when RIDEM inspected the Property.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 4,000 square feet.</li> </ol>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. RIDEM issued a permit to the former owner of the Property to alter freshwater wetlands on the Property. The permit was recorded in the land evidence records on August 27, 2013. The plans associated with the permit clearly showed the Forested Wetland, and the permit clearly stated that no alterations to the wetlands were allowed (other than what was approved through the permit) without approval by RIDEM. Respondent acquired the Property on May 29, 2015, and Respondent knew or should have known of the recorded permit. On or about April 10, 2018, RIDEM received a letter from Respondent's consultant in response to the NIE. The letter stated that Respondent intended to comply with the NIE. Respondent did not request a restoration deadline extension at any time. Respondent has taken no steps to mitigate the noncompliance, despite receiving the NIE that required Respondent to restore the Forested Wetland.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands, including the Forested Wetland, were present on the Property and had knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The FWW Act allows RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing or reckless. The alterations to the Forested Wetland were knowing and willful.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

# PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to the 2<sup>ND</sup> Forested Wetland – Fact C(8)(d)

VIOLATION NOs.: D (1) and D (2)

<b>TYPE</b>		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by clearing, filling (with at least soil material and stones), grading and creating surface disturbance within the 2<sup>ND</sup> Forested Wetland, partially eliminating this wetland feature from the landscape. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> Prior to the unauthorized alterations, the 2<sup>ND</sup> Forested Wetland was entirely undisturbed, comprised of mature woodland (forest/shrub) habitat.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – approximately 4½ years. RIDEM first became aware of the alterations on October 17, 2017 when RIDEM inspected the Property.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 2,700 square feet.</li> </ol>		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. RIDEM issued a permit to the former owner of the Property to alter freshwater wetlands on the Property. The permit was recorded in the land evidence records on August 27, 2013. The plans associated with the permit clearly showed the Forested Wetland, and the permit clearly stated that no alterations to the wetlands were allowed (other than what was approved through the permit) without approval by RIDEM. Respondent acquired the Property on May 29, 2015, and Respondent knew or should have known of the recorded permit. On or about April 10, 2018, RIDEM received a letter from Respondent's consultant in response to the NIE. The letter stated that Respondent intended to comply with the NIE. Respondent did not request a restoration deadline extension at any time. Respondent has taken no steps to mitigate the noncompliance, despite receiving the NIE that required Respondent to restore the Forested Wetland.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands, including the Forested Wetland, were present on the Property and had knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The FWW Act allows RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing or reckless. The alterations to the Forested Wetland were knowing and willful.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

# PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to the ASSF – Fact C(8)(e)

VIOLATION NOs.: D (1) and D (2)

<b>TYPE</b>		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___ <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by clearing, filling (with at least soil material and stones), grading and creating surface disturbance within the ASSF, eliminating this entire wetland feature from the landscape. The severity of the alterations to the wetland environment was determined to be of importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> Prior to the unauthorized alterations, the ASSF was entirely undisturbed and connected the Forested Wetland and 2<sup>ND</sup> Forested Wetland.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – approximately 4½ years. RIDEM first became aware of the alterations on October 17, 2017 when RIDEM inspected the Property.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 185 linear feet.</li> </ol>		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. RIDEM issued a permit to the former owner of the Property to alter freshwater wetlands on the Property. The permit was recorded in the land evidence records on August 27, 2013. The plans associated with the permit clearly showed the ASSF, and the permit clearly stated that no alterations to the wetlands were allowed (other than what was approved through the permit) without approval by RIDEM. Respondent acquired the Property on May 29, 2015, and Respondent knew or should have known of the recorded permit. On or about April 10, 2018, RIDEM received a letter from Respondent’s consultant in response to the NIE. The letter stated that Respondent intended to comply with the NIE. Respondent did not request a restoration deadline extension at any time. Respondent has taken no steps to mitigate the noncompliance, despite receiving the NIE that required Respondent to restore the ASSF.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands, including the Forested Wetland, were present on the Property and had knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The FWW Act allows RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing or reckless. The alterations to the ASSF were knowing and willful.

<u>X</u> MAJOR	<u>X</u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	<b>MODERATE</b>	\$2,500 to \$5,000 <b>\$2,500</b>	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500



# PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to the RBW – Fact C(8)(f)

VIOLATION NOs.: D (1) and D (2)

<b>TYPE</b>		
<p><u>  X  </u> <b>TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u>      </u> <b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u>      </u> <b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by clearing, filling (with at least sand, soil material, stones/boulders, and slash), grading and creating surface disturbance within the RBW, portions of which also include the Swamp and PW. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> Prior to the unauthorized alterations, the RBW in the areas of concern was entirely undisturbed and comprised of mature deciduous forest.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – approximately 4½ years. RIDEM first became aware of the alterations on October 17, 2017 when RIDEM inspected the Property.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 113,300 square feet (2.53 ± acres).</li> </ol>		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. RIDEM issued a permit to the former owner of the Property to alter freshwater wetlands on the Property. The permit was recorded in the land evidence records on August 27, 2013. The plans associated with the permit clearly showed the RBW, and the permit clearly stated that no alterations to the wetlands were allowed (other than what was approved through the permit) without approval by RIDEM. Respondent acquired the Property on May 29, 2015, and Respondent knew or should have known of the recorded permit. On or about April 10, 2018, RIDEM received a letter from Respondent’s consultant in response to the NIE. The letter stated that Respondent intended to comply with the NIE. Respondent did not request a restoration deadline extension at any time. On December 7, 2021, RIDEM received a letter from Respondent’s consultant on the actions taken to comply with the NIE. RIDEM’s review of the letter revealed that Respondent performed some restoration within the RBW, portions of which also include the Swamp and PW (in the form of fill removal) to mitigate the noncompliance, however, Respondent further altered the PW by building a portion of a boulder retaining wall within it.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands, including the RBW, were present on the Property and had knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The FWW Act allows RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing or reckless. The alterations to the RBW were knowing and willful.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

# PENALTY MATRIX WORKSHEET

CITATION: Elimination of Basin – Fact C(8)(g)

VIOLATION NOs.: D (1) and D (2)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u>      </u> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
<b>DEVIATION FROM THE STANDARD</b> <small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent eliminated the Basin installed by the prior owner as required by the Permit. The severity of the alterations to the wetland environment was determined to be of importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> Prior to the unauthorized alterations, the Basin was installed and upon information and belief, functioning as designed to treat and infiltrate stormwater from the Property.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – approximately 4½ years. RIDEM first became aware of the alterations on October 17, 2017 when RIDEM inspected the Property.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. RIDEM issued a permit to the former owner of the Property to alter freshwater wetlands on the Property. The permit was recorded in the land evidence records on August 27, 2013. The plans associated with the permit clearly showed the Basin. Respondent acquired the Property on May 29, 2015, and Respondent knew or should have known of the recorded permit. On or about April 10, 2018, RIDEM received a letter from Respondent's consultant in response to the NIE. The letter stated that Respondent intended to comply with the NIE. Respondent did not request a restoration deadline extension at any time. Respondent has taken no steps to mitigate the noncompliance, despite receiving the NIE that required Respondent to restore the Basin.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that the Basin was present on the Property and had knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The FWW Act allows RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing or reckless. The elimination of the Basin was knowing and willful.

<b>MAJOR</b>	<u><b>X</b></u> <b>MODERATE</b>	<b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	<b>MODERATE</b>	\$2,500 to \$5,000 <b>\$2,500</b>	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

# PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to the Stream – Fact C(9)(a)

VIOLATION NOs.: D (1) and D (2)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u>      </u> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
<b>DEVIATION FROM THE STANDARD</b> <small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent excavated and created soil disturbance and erosion/sedimentation within the Stream, also resulting in erosion and sedimentation within wetlands downstream. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> Prior to the unauthorized alterations, the portions of the Stream that are the subject of the NOV were entirely undisturbed, containing a surface watercourse surrounded by vegetated (woodland) habitat. The Stream is visible on several years of aerial photographs.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – approximately 1 year. RIDEM first became aware of the alterations on May 20, 2021 when RIDEM inspected the Property.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 100 linear feet of Stream channel.</li> </ol> <p style="text-align: right;">(continued)</p>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. RIDEM issued a permit to the former owner of the Property to alter freshwater wetlands on the Property. The permit was recorded in the land evidence records on August 27, 2013. The plans associated with the permit clearly showed the Stream, and the permit clearly stated that no alterations to the wetlands were allowed (other than what was approved through the permit) without approval by RIDEM. Respondent acquired the Property on May 29, 2015, and Respondent knew or should have known of the recorded permit. On October 17, 2017, RIDEM inspected the property and spoke with Respondent at the time of the inspection. The inspector advised Respondent that the activities RIDEM observed were occurring within the Stream and Respondent did not have a permit from RIDEM to undertake these activities. Also, the NIE required Respondent to cease further alterations to freshwater wetlands. Despite the recorded permit, verbal notification from RIDEM’s inspector and NIE, Respondent further altered the Stream without an approval from RIDEM. Respondent has taken no steps to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands, including the Stream, were present on the Property and had knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The FWW Act allows RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing or reckless. The alterations to the Stream were knowing and willful.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

# PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to the Swamp – Fact C(9)(b)

VIOLATION NOs.: D (1) and D (2)

<b>TYPE</b>		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by clearing, excavating, filling, grading, and creating surface disturbance within Swamp (including the RBW). The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> Prior to the unauthorized alterations, the Swamp and RBW that is the subject of the NOV was entirely undisturbed, comprised of mature woodland (forest/shrub) habitat.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – approximately 1 year. RIDEM first became aware of the alterations on May 20, 2021 when RIDEM inspected the Property.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 3,000 square feet.</li> </ol>		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. RIDEM issued a permit to the former owner of the Property to alter freshwater wetlands on the Property. The permit was recorded in the land evidence records on August 27, 2013. The plans associated with the permit clearly showed the Swamp, and the permit clearly stated that no alterations to the wetlands were allowed (other than what was approved through the permit) without approval by RIDEM. Respondent acquired the Property on May 29, 2015, and Respondent knew or should have known of the recorded permit. On October 17, 2017, RIDEM inspected the property and spoke with Respondent at the time of the inspection. The inspector advised Respondent that the activities RIDEM observed were occurring within the Swamp and Respondent did not have a permit from RIDEM to undertake these activities. Also, the NIE required Respondent to cease further alterations to freshwater wetlands. Despite the recorded permit, verbal notification from RIDEM’s inspector and NIE, Respondent further altered the Swamp without an approval from RIDEM. Respondent has taken no steps to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands, including the Swamp, were present on the Property and had knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The FWW Act allows RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing or reckless. The alterations to the Swamp were knowing and willful.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500



# PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to the PW and RBW – Facts C(9)(c) and C (9)(d)

VIOLATION NOS.: D (1) and D (2)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u>      </u> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
<b>DEVIATION FROM THE STANDARD</b> THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by clearing, excavating, filling, stumping, grading, and creating surface disturbance within the PW and RBW, and constructing a portion of a pool apron and fencing in the RBW. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> Prior to the unauthorized alterations, the PW and RBW the RBW in the areas of concern was entirely undisturbed and comprised of mature deciduous forest.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – approximately 1 year. RIDEM first became aware of the alterations on May 20, 2021 when RIDEM inspected the Property.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 13,0000 square feet.</li> </ol>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. RIDEM issued a permit to the former owner of the Property to alter freshwater wetlands on the Property. The permit was recorded in the land evidence records on August 27, 2013. The plans associated with the permit clearly showed the PW and RBW, and the permit clearly stated that no alterations to the wetlands were allowed (other than what was approved through the permit) without approval by RIDEM. Respondent acquired the Property on May 29, 2015, and Respondent knew or should have known of the recorded permit. On October 17, 2017, RIDEM inspected the property and spoke with Respondent at the time of the inspection. The inspector advised Respondent that the activities RIDEM observed were occurring within the RBW and Respondent did not have a permit from RIDEM to undertake these activities. Also, the NIE required Respondent to cease further alterations to freshwater wetlands. Despite the recorded permit, verbal notification from RIDEM’s inspector and NIE, Respondent further altered the PW and RBW without an approval from RIDEM. Respondent has taken no steps to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands, including the PW and RBW, were present on the Property and had knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The FWW Act allows RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing or reckless. The alterations to the PW and RBW were knowing and willful.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500