

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

**IN RE: 4 N PROPERTIES, LLC**

**FILE NOs.: C09-0079 and OCI-FW-17-164**

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 Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under DEM’s jurisdiction.

B. Administrative History

On 4 November 2010, DEM issued a Notice of Intent to Enforce (the “2010 NIE”) to Respondent by certified mail for some of the violations that are the subject of this Notice of Violation (“NOV”). The 2010 NIE required specific actions to correct the violations. On 17 November 2010, in response to the NIE, Respondent’s registered agent submitted a public records request to review the file. Respondent did not comply with the 2010 NIE. On 14 February 2018, in response to a complaint received by DEM, DEM inspected the property that is the subject of the NOV. At that time, DEM’s inspector informed Jared Nunes (“J. Nunes”), who identified himself as an owner of the property, of some of the violations that are the subject of the NOV and the specific actions required to correct the violations. The violations were not resolved, and on 3 August 2018, DEM issued two separate NIEs to Respondent by certified mail (the “2018 NIEs”). One NIE advised Respondent that the violations that were the subject of the 2010 NIE remained unresolved, and the other NIE was for new violations that were observed. The 2018 NIEs required the violations be corrected by 31 October 2018. On 26 October 2018, DEM met with J. Nunes to discuss the 2018 NIEs. On 13 August 2019, DEM received a letter from Respondent’s consultant. The letter stated that Respondent intended to submit an after the fact permit application to DEM within 6 weeks. On 13 December 2019, DEM sent electronic correspondence to Ronald Nunes (“R. Nunes”), who identified himself as an owner of the property. The correspondence requested that R. Nunes advise DEM when an application would be submitted. On 19 December 2019, DEM received electronic correspondence from Respondent’s consultant. The correspondence stated that Respondent hoped to submit the application within the next 3-4 weeks. As of the date of the NOV, Respondent has not applied to DEM for an after the fact permit and has not complied with the 2018 NIEs.

C. Facts

- (1) The property is located approximately 500 feet east of the northeastern intersection of Industrial Lane and Clyde Street, Plat 18, Lot 265 (“Lot 265”) and approximately 750 feet southeast of the same intersection of Industrial Lane and Clyde Street, Plat 18, Lot 261 (“Lot 261”) and Lot 270 (“Lot 270”), in the Town of West Warwick, Rhode Island (the “Property”).
- (2) Respondent owns Lot 265 and Lot 270.
- (3) Franmar Properties of Rhode Island, LLC (“FPRI”) owns Lot 261. FPRI acquired Lot 261 on 21 February 2017.
- (4) Lot 261, 265 and Lot 270 were previously part of a larger parcel identified as Plat 18, Lot 246 in the Town of West Warwick, Rhode Island (“Lot 246”).
- (5) Respondent owned Lot 246. Respondent acquired Lot 246 on 17 November 2004.
- (6) On 22 July 2009, DEM inspected Lot 246. The inspection revealed clearing and filling in the form of at least soil material, asphalt, compost and solid waste within Riverbank Wetland associated with North Branch Pawtuxet River (the “Riverbank Wetland”).
- (7) On 27 April 2016, Respondent subdivided Lot 246 into five separate parcels, three of which are Lot 261, Lot 265 and Lot 270.
- (8) On 14 February 2018 and 26 February 2019, DEM inspected the Property. The inspections revealed the following:
  - (a) On Lot 265 and Lot 270, clearing, filling (in the form of at least soil material mixed with debris, yard waste, stumps, bricks, sand, rocks, concrete pieces, logs, telephone poles, concrete culvert, and wood debris), grading, paving and storage of vehicles, trailers, other construction/landscaping equipment materials in three separate areas within the Riverbank Wetland. These activities have resulted in the alteration of approximately 37,000 square feet of freshwater wetland; and
  - (b) On Lot 261, woody vegetation and grasses had begun to reclaim the Riverbank Wetland; however, a layer of crushed asphalt remained at the surface. This activity has resulted in the alteration of approximately 7,000 square feet of freshwater wetland.

- (9) DEM reviewed aerial photographs of the Property taken in 2004, 2008, 2012 and 2016. The review revealed the following:
  - (a) In 2004, the alterations to the Riverbank Wetland described in subsection C (8) above were not present;
  - (b) In 2008, a portion of the Riverbank Wetland on Lot 265 and Lot 270 was cleared and being worked in;
  - (c) In 2012, the same alterations to the Riverbank Wetland described in subsection 9(b) above were still present; and
  - (d) In 2016, all the alterations to the Riverbank Wetland described in subsection C (8) above were present.
- (10) The activities described in subsections C (6) and C (8) above are not exempt in accordance with the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (the “Wetland Regulations”) that were in effect at the time the activities occurred.
- (11) Respondent did not receive a permit from DEM to alter the Riverbank Wetland in the areas described in subsections C (6) and C (8) 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 DEM.
- (2) **Wetland Regulations, Rule 5.01(A) [effective 1 June 2007 through 24 June 2009]** – prohibiting activities which may alter freshwater wetlands without a permit from DEM, unless the activities are exempt in accordance with Rule 6.00.
- (3) **Wetland Regulations, Rule 5.01(A) [effective 24 June 2009 through 28 December 2010]** – prohibiting activities which may alter freshwater wetlands without a permit from DEM, unless the activities are exempt in accordance with Rule 6.00.
- (4) **Wetland Regulations, Rule 5.01(A) [effective 28 December 2010 through 16 July 2014]** – prohibiting activities which may alter freshwater wetlands without a permit from DEM, unless the activities are exempt in accordance with Rule 6.00.

- (5) ***Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1), Part 1.5(A)(1) [effective 16 July 2014 to Current]*** – prohibiting activities which may alter freshwater wetlands without a permit from DEM, unless the activities are 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), Respondent is hereby ORDERED to:

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

**RESTORATION REQUIREMENTS**

- (3) Prior to the initiation of restoration activities, properly install a continuous, uninterrupted line of appropriate soil erosion/sediment controls (e.g., silt fence, staked haybales and/or biodegradable fiber logs/filter socks) along the eastern edge of the altered portion of the Riverbank Wetland. 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. At the discretion and direction of DEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
- (4) Remove all unauthorized fill material (in the form of at least soil material mixed with debris, yard waste, stumps, bricks, sand, rocks, concrete pieces, logs, telephone poles, concrete culvert, crushed asphalt, and wood debris) from the Riverbank Wetland. Fill must be removed down to original grade to match the surface elevations of the undisturbed surrounding areas. Any fill that meets the definition of solid waste in Rhode Island's *Refuse Disposal Act* and the *Rules and Regulations for Solid Waste Management Facilities and Organic Waste Management Facilities (250-RICR-140-05-1)* must be properly disposed of at a licensed solid waste management facility and receipts of the proper disposal of all solid waste must be provided to DEM. All remaining fill that is removed must be deposited in an appropriate upland location, outside of all freshwater wetlands.
- (5) Remove all vehicles, trailers, other construction/landscaping equipment from the Riverbank Wetland.

(6) Following the removal of the fill material as described in subsections E (4) and E (5) above, all disturbed surface areas within the Riverbank Wetland must be covered with plantable soil (4 inches minimum), as needed, seeded with a wildlife conservation seed mixture and covered with a thick mat of straw mulch, which is free of any contaminants that could promote the spread of invasive plant species.

(7) All portions of the Riverbank Wetland must be planted with trees and shrubs, as follows:

(a) Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, 4 feet tall after planting, throughout the areas defined above. Tree plantings 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*  
White ash, *Fraxinus americana*  
White oak, *Quercus alba*  
Northern red oak, *Quercus rubra*  
Sassafras, *Sassafras albidum*  
Gray birch, *Betula populifolia*  
Black birch, *Betula lenta*  
American beech, *Fagus grandifolia*

(b) 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 plantings must include an equal distribution of at least 5 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*  
Bayberry, *Myrica pennsylvanica*  
Black chokeberry, *Aronia melanocarpa*  
Witchhazel, *Hamamelis virginiana*

- (c) 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 landward edge of the Altered Wetland. The tree species to be utilized for this screening line (described above) must be chosen from the following selections:

Northern white cedar (Eastern arborvitae), *Thuja occidentalis*

White pine, *Pinus strobus*

White spruce, *Picea glauca*

- (8) Following the completion of the planting as described in subsection E (7) above, place large boulders or large (3 feet by 2 feet by 2 feet) concrete blocks on the landward edge of the Riverbank Wetland.
- (9) If any of the required plantings fail to survive at least 1 full growing season from the time they have been planted, replant and maintain the same plant species until such time that survival is maintained over 1 full growing season.
- (10) All restored wetland areas, including replanted areas, must be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland area, or within other freshwater wetlands on the Property, without first obtaining a permit from DEM, unless the activity is exempt under the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1)*.
- (11) Upon stabilization of all disturbed areas, all non-biodegradable erosion and sedimentation controls must be removed from the freshwater wetlands. Prior to the removal of the controls and/or prior to the contractor vacating the site, all accumulated sediment must be removed to a suitable upland area, outside of all freshwater wetlands.
- (12) The above restoration work shall be completed by **31 May 2021**.

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:

**\$15,000**

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective 31 December 2001 to Current] (the “Penalty Regulations”) and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check or money order made payable to the “General Treasury – Water & Air Protection Program” and shall be forwarded to DEM’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (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 DEM’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 DEM'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  
DEM - Administrative Adjudication Division  
235 Promenade Street, Room 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); **AND**
  - (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 the *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* [effective 27 November 2014 to Current]

- (2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmit, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
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 DEM'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 West Warwick, 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 2-1-24, 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 DEM'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 at (401) 222-1360 ext. 77400 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: \_\_\_\_\_  
DEM David E. Chopy, Administrator  
Office of Compliance and Inspection

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

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 2021  
the within Notice of Violation was forwarded to:

4 N PROPERTIES, LLC  
c/o Joel S. Chase, Esquire, Registered Agent  
300 Metro Center Boulevard, Suite 150A  
Warwick, RI 02886

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS  
 File Nos.: C09-0079 and OCI-FW-17-164  
 Respondent: 4 N PROPERTIES, LLC

<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) through D (5) Wetland Alterations within Riverbank Wetland – Facts C(6) and C (8)(a)	Type I (\$10,000 Max. Penalty) *	Major	\$10,000	1 violation	\$10,000
D (1) through D (5) Wetland Alterations within Riverbank Wetland – Facts C(6) and C(8)(b)	Type I (\$10,000 Max. Penalty) *	Major	\$5,000	1 violation	\$5,000
<b>SUB-TOTAL</b>					<b>\$15,000</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 either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted 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 DEM 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 = \$15,000**

# PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations within Riverbank Wetland – Facts C (6) and C (8)(a)  
 VIOLATION NO.: D (1) through D (5)

<b>TYPE</b>		
<p style="text-align: center;">___ <b>X</b> ___ <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><u>FACTORS CONSIDERED:</u></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 on the Property by clearing, filling (in the form of at least soil material mixed with debris, yard waste, stumps, bricks, sand, rocks, concrete pieces, logs, telephone poles, concrete culvert, and wood debris), grading, paving and storage of vehicles, trailers, other construction/landscaping equipment materials in three separate areas within the Riverbank Wetland on Lot 265 and Lot 270. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> The Riverbank Wetland on the Property that was previously unaltered is approximately 4 acres (or approximately 175,000 square feet). Vegetation noted within the Riverbank Wetland includes grasses, shrubs and trees (birch, beech and oak). According to aerial photos and previous inspections conducted by DEM, the Riverbank Wetland was previously vegetated and largely undisturbed – recovering (revegetating) from being entirely cleared around the year 1972. At the time of Respondent’s acquisition of the Property, the Riverbank Wetland in the area of the alterations cited in the NOV was vegetated with grasses, trees and shrubs.</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 – at least approximately 12 years. A review of aerial photographs revealed that some of the alterations were present in April 2008.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 37,000 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. Respondent had knowledge of the Riverbank Wetland, and the need for a permit from DEM prior to altering the Riverbank Wetland. On 13 January 2004, DEM inspected the Property and spoke with R. Nunes at the time of the inspection. R. Nunes agreed to remove material from the Riverbank Wetland and allow the wetland to naturally revegetate. DEM inspected the Property on 9 June 2004 with R. Nunes present and determined that the Riverbank Wetland was properly restored. R. Nunes was advised not to work in the Riverbank Wetland without a permit and he understood and agreed. Respondent has not taken any steps to mitigate the noncompliance, despite receiving the 2010 NIE and 2018 NIEs from DEM requiring it to do so.
- (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 violation, and the violation was foreseeable. R. Nunes had knowledge of the Riverbank Wetland and knowledge of the Wetland Regulations, yet Respondent failed to apply to DEM for a permit prior to altering the Riverbank Wetland.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<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 within Riverbank Wetland – Facts C (6) and C (8)(b)  
 VIOLATION NO.: D (1) through D (5)

<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><u>FACTORS CONSIDERED:</u></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 on the Property by clearing and filling clearing and filling in the form of at least soil material, asphalt, compost and solid waste within the Riverbank Wetland on Lot 271. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> The Riverbank Wetland on the Property that was previously unaltered is approximately 4 acres (or approximately 175,000 square feet). Vegetation noted within the Riverbank Wetland includes grasses, shrubs and trees (birch, beech and oak). According to aerial photos and previous inspections conducted by DEM, the Riverbank Wetland was previously vegetated and largely undisturbed – recovering (revegetating) from being entirely cleared around the year 1972. At the time of Respondent’s acquisition of the Property, the Riverbank Wetland in the area of the alterations cited in the NOV was vegetated with grasses, trees and shrubs.</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 – at least approximately 11 years. DEM inspected the Property on 22 July 2009 and identified the violation.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 7,000 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. Respondent had knowledge of the Riverbank Wetland, and the need for a permit from DEM prior to altering the Riverbank Wetland. On 13 January 2004, DEM inspected the Property and spoke with R. Nunes at the time of the inspection. R. Nunes agreed to remove material from the Riverbank Wetland and allow the wetland to naturally revegetate. DEM inspected the Property on 9 June 2004 with R. Nunes present and determined that the Riverbank Wetland was properly restored. R. Nunes was advised not to work in the Riverbank Wetland without a permit and he understood and agreed. Respondent has not taken any steps to mitigate the noncompliance, despite receiving the 2010 NIE and 2018 NIEs from DEM requiring it to do so.
- (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 violation, and the violation was foreseeable. R. Nunes had knowledge of the Riverbank Wetland and knowledge of the Wetland Regulations, yet Respondent failed to apply to DEM for a permit prior to altering the Riverbank Wetland.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<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>\$5,000</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