

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

**IN RE: Lee H. Beausoleil
Jennifer R. Beausoleil**

FILE NO: OCI-FW-18-187

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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

On April 30, 2019, DEM issued a Notice of Intent to Enforce (“NIE”) to Respondents by certified mail for the violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the violations. On May 7, 2019, DEM received a letter from Lee Beausoleil (“Beausoleil”) in response to the NIE. Beausoleil stated in the letter that the information outlined in the NIE was incorrect. On May 15, 2019, DEM sent electronic correspondence to Beausoleil that explained the reasoning behind the issuance of the NIE, requested documents related to the wetlands on the property, and offered to meet with Respondents at the property. Electronic correspondence was sent back and forth between the parties attempting to arrange a meeting, but no meeting was scheduled. On February 21, 2020, DEM issued a letter to Respondents by certified mail that restated the actions required to correct the violations and advised Respondents that a request for an extension of the wetland restoration deadline must be made if Respondents intended to resolve this matter. On March 9, 2020, DEM received electronic correspondence from Respondents’ agent in response to the letter. The correspondence stated that Beausoleil was confused about why DEM sent the letter, when he stated in his previous letter that he denied altering freshwater wetlands. Beausoleil requested that DEM contact him. On December 17, 2020, DEM received a letter from Beausoleil. The letter stated that DEM’s inspector contacted the realtor who was selling the property and provided false information about the property. On December 23, 2020 and January 4, 2021, DEM sent electronic correspondence to Beausoleil again offering to meet at the property. On January 4, 2021, DEM received electronic correspondence from Respondents’ agent stating that Beausoleil was going to engage a wetland consultant and schedule a meeting. On January 12, 2021, the property was sold. DEM did not receive any communications from Respondents, the realtor, or the new owner prior to the sale of the property. On February 11, 2021, DEM received electronic correspondence from Respondents’ agent advising DEM that Beausoleil was planning to meet with DEM at the property and would respond soon with a proposed date. As of the date of the NOV, DEM has received no further communications from Respondents and no action has been taken to comply with the NIE.

C. Facts

- (1) The property is located approximately 800 feet west/southwest of Burlingame Road, at House Number 70 (Burlingame), approximately 1,700 feet northwest from the intersection of Burlingame Road and Phenix Avenue, Assessor's Plat 23, Lot 90, in Cranston, Rhode Island (the "Property").
- (2) Charbel Kosseifi currently owns the Property. Mr. Kosseifi purchased the Property on January 12, 2021.
- (3) Respondents formerly owned the Property. Respondents owned the Property between November 7, 2005 and January 12, 2021.
- (4) On December 19, 2018, DEM inspected the Property. The inspection revealed the following:
 - (a) Clearing, stumping/grubbing, filling (in the form of gravel and other soil materials; crushed, waste and new asphalt; yard waste; stored boats, trucks, and oil tanks; and various other waste debris), grading, creating surface disturbance, and constructing hoop houses within a Swamp. These activities altered approximately 41,000 square feet of freshwater wetlands.
 - (b) Clearing, stumping/grubbing, filling (in the form of gravel and other soil materials; crushed, waste and new asphalt; yard waste; stored boats, trucks, and oil tanks; and various other waste debris), grading, creating surface disturbance, and constructing a hoop house within Perimeter Wetland. These activities altered approximately 17,500 square feet of freshwater wetland.
 - (c) Clearing, stumping/grubbing, filling (in the form of gravel and other soil materials, fencing, and asphalt), grading, and construction of basketball court in a Forested Wetland, resulting in the entire elimination of this wetland feature. These activities altered approximately 8,000 square feet of freshwater wetlands.
- (5) DEM reviewed recent aerial photographs, which showed that the alterations described in subsection C (4) remain in place and that no further alterations have occurred.
- (6) The activities described in subsection C (4) were not exempt in accordance with Part 1.6 of the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* [effective July 16, 2014 to January 4, 2022] (the "Wetland Rules").
- (7) Respondents did not have a permit from DEM to alter the freshwater wetlands on the Property as described in subsection C (4).

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 the DEM; and
- (2) **Wetland Rules, Part 1.5(A)(1)** – 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), 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) Prior to the commencement of restoration, install (in a proper manner) appropriate biodegradable soil erosion/sediment (“SES”) controls (e.g., staked straw wattles, coconut fiber logs/coir logs, and/or staked haybales), along the limits of the unauthorized alterations, between all unauthorized disturbed areas and the adjacent undisturbed freshwater wetlands. The SES controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) prior to, during, and immediately following the completion of the required wetland restoration, and until such time that all surrounding areas are properly stabilized. **At the discretion and direction of DEM, additional SES controls must be installed, as deemed necessary, to protect all freshwater wetlands.**
- (b) Remove all unauthorized fill material (including but not limited to gravel and other soil materials; crushed, waste, & new asphalt; yard waste; stored boats, trucks, and oil tanks; various other waste debris; fencing, and all components of the constructed basketball court) from the affected portions of the Swamp and Forested Wetland on the Property. 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 hydric organic surface soils are present. The restored portions of the Swamp must match the surface elevations of the surrounding undisturbed wetlands. Upon completion of fill removal from the Forested Wetland, stable slopes (3:1 maximum grade) must be established around the entire perimeter of the restored wetland area. Prior to proceeding to the next restoration step, all areas of concern where fill has been removed must first be inspected by DEM, to confirm that the correct restoration grades have been achieved. If the original

wetland (organic/hydric) surface soil is not present within the Swamp and/or Forested Wetland following fill removal, then at the discretion and direction of DEM, the following procedure must be utilized:

- (i) An additional 6 inches of soil material must be excavated from the affected portions of the Swamp and/or Forested Wetland (below original grade), to ensure that the proper hydrology is achieved at the completion of the restoration work.
 - (ii) A minimum of 6 inches of high-organic plantable soil must then be applied throughout the affected (excavated/restored) portions of the Swamp and/or Forested Wetland to achieve the final desired wetland surface grade, which should match the elevations of any adjacent remaining undisturbed wetland.
- (c) All fill material that is removed must be deposited in an appropriate upland location, outside of all freshwater wetlands.
 - (d) All restoration work within the Swamp and Forested Wetland must be undertaken during an acceptable “low flow” period (generally July 1 - October 31).
 - (e) Remove all unauthorized fill material (including but not limited to gravel and other soil materials; crushed, waste, and new asphalt; yard waste; stored boats, trucks, and oil tanks; and various other waste debris) from the affected portions of the 50-Foot Perimeter Wetland (“PW”) on the Property. All non-native fill material must be removed from the PW down to the original elevations that were present prior to the alterations, matching the surface elevations of the surrounding undisturbed lands.
 - (f) Re-grade all slopes resulting from fill removal adjacent to the restored Forested Wetland and PW to match existing undisturbed surrounding grades. A maximum 3:1 slope must be maintained at the limits of the required restoration within all areas of concern. Finished slopes must be stabilized by must be applying a minimum 4 inches of plantable soil and seeding with a proper wildlife conservation seed mixture, then mulching all disturbed surfaces with a mat of loose straw mulch (see subsection (g) below).
 - (g) Cover all disturbed surfaces within wetlands and the surrounding areas, resulting from the above restoration activities with a suitable plantable soil (as necessary) and properly seed and stabilize all disturbed surfaces. If not present following fill removal and backfilling restoration activities, as also outlined above, all affected Swamp and Forested Wetland areas must be covered with a minimum 6 inches of high-organic soil material (using the procedure specified in subsection (b) above); then seeded with a proper wetland seed mixture. If not present following the above restoration activities, all affected PW areas, along with the newly established slopes (3:1) surrounding the Forested Wetland, must be covered with a minimum 4 inches of plantable soil; then seeded with a proper wildlife conservation seed mixture. A thick mat of loose straw mulch,

which is free of any contaminants that may contain invasive plant seed material, must then be applied to all disturbed surfaces to prevent soil erosion and control possible sedimentation processes from occurring. **At the discretion and direction of DEM**, steeply sloping or denuded/disturbed areas to be left exposed for long periods of time must be covered with a proper biodegradable erosion control matting material (e.g., jute mesh or coconut fiber matting).

- (h) Plant the surface areas within all affected portions of the altered/restored Swamp and over the entire extent of the altered/restored Forested Wetland with trees and shrubs, **at the direction of DEM**. The trees and shrubs to be planted in these locations 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). Trees and shrubs must be installed in the Swamp and Forested Wetland as follows:

Balled and burlapped or potted tree species must be planted in an interspersed fashion, 15 feet on center, 4 feet tall after planting, throughout the area defined above. Tree species must include an equal distribution of at least 3 of the following selections:

Red maple, *Acer rubrum*
Box elder, *Acer negundo*
Black gum (Tupelo), *Nyssa sylvatica*
Green Ash, *Fraxinus pennsylvanica*
Silver maple, *Acer saccharinum*
Swamp white oak, *Quercus bicolor*
Black willow, *Salix nigra*
Pin oak, *Quercus palustris*
Yellow Birch, *Betula allegheniensis*

Balled and burlapped or potted shrub species must be planted in an interspersed fashion 8 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:

Red osier dogwood, *Cornus sericea* spp. *sericea* L
Northern arrowwood, *Viburnum recognitum*
Speckled alder, *Alnus rugosa*
Smooth alder, *Alnus serrulata*
Elderberry, *Sambucus canadensis*
Winterberry, *Ilex verticillata*
Highbush blueberry, *Vaccinium corymbosum*
Spice bush, *Lindera benzoin*
Swamp azalea, *Rhododendron viscosum*
Red chokeberry, *Aronia arbutifolia*
Buttonbush, *Cephalanthus occidentalis*
Maleberry, *Lyonia lingustrina*

Swamp Rose, *Rosa palustris*

- (i) Plant all affected portions of the altered/restored PW with trees and shrubs, at the direction of DEM as follows:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, 4 to 5 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*
Red maple, *Acer rubrum*
Box elder, *Acer negundo*
Northern red oak, *Quercus rubra*
White oak, *Quercus alba*
Black Cherry, *Prunus serotina*
American beech, *Fagus grandifolia*
Sassafras, *Sassafras albidum*
Black birch, *Betula lenta*
Gray Birch, *Betula populifolia*

Balled and burlapped, potted, or transplanted shrub species must be planted in an interspersed fashion 5 feet on center, at least 3 feet tall after planting, throughout the areas defined above. Shrub species 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*

- (j) 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 entire outer (landward) edge of the restored PW and along the top of the newly established slope surrounding the restored Forested Wetland. The tree species to be utilized for this screening line (described above) must include at least 2 of the following selections:

Northern white cedar, *Thuja occidentalis*

White pine, *Pinus strobus*

Eastern hemlock (disease-resistant strain), *Tsuga canadensis*

White spruce, *Picea glauca*

- (k) Any of the required plantings failing to survive at least 2 full growing seasons from the time they have been planted, must be replanted (with the same or similar species) and further replaced (as necessary) until such time that survival is maintained over 2 full growing seasons.
- (l) Following the completion of other wetland restoration requirements, all disturbed surface areas within and immediately adjacent to the restored freshwater wetlands must be seeded with an appropriate seed mixture and stabilized with a dense mat of loose straw mulch to prevent soil erosion and sedimentation processes from occurring.
- (m) 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 disturbances, alterations, or improvements are allowed within the restored wetland areas, or within any other freshwater wetlands on the Property, without first obtaining a valid permit from DEM, unless the activity is exempt under Part 1.6 of the Wetland Rules.**
- (n) Contact DEM prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. **No work shall commence until such time that Respondents and/or their agents have met in the field with DEM.**
- (o) All the restoration work outlined above must be completed by **October 15, 2022**.

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:

\$12,500

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties* [effective January 4, 2022 to Current] (the “Penalty Regulations”) and must be paid to DEM within 30 days of your receipt of the NOV.
- (3) 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, DEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767
- (b) By wire transfer in accordance with instructions provided by DEM.
- (4) Penalties assessed against Respondents 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, the 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, 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 the *Rules and Regulations for the Administrative Adjudication Division* [effective January 4, 2022 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, 4TH 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 City of Cranston, Rhode Island 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. All other inquiries should be directed to David E. Chopy at (401) 222-1360 ext. 2777400 or at 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:

Lee H. Beausoleil
341 Laten Knight Road
Cranston, RI 02921-3205

Lee H. Beausoleil
Beausoleil & Sons, Inc.
287 Main Street
Cranston, RI 02831

Jennifer R. Beausoleil
341 Laten Knight Road
Cranston, RI 02921-3205

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: OCI-FW-18-187

Respondents: Lee Beausoleil and Jennifer Beausoleil

| 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 – Fact C(4)(a) | Type I <i>(\$5,000 Max. Penalty) *</i> | Major | \$5,000 | 1 violation | \$5,000 |
| D (1) and D (2) Wetland Alterations – Fact C(4)(b) | Type I <i>(\$5,000 Max. Penalty) *</i> | Moderate | \$2,500 | 1 violation | \$2,500 |
| D (1) and D (2) Wetland Alterations – Fact C(4)(c) | Type I <i>(\$5,000 Max. Penalty) *</i> | Major | \$5,000 | 1 violation | \$5,000 |
| SUB-TOTAL | | | | | \$12,500 |

*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 Respondents enjoyed economic benefit from the noncompliance alleged in this enforcement action, in the form of parking and equipment/materials storage facilities for Beausoleil & Sons, Inc., Paving Contractors. 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 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 = \$12,500

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations
 VIOLATION NOs.: D (1) and D (2) – Fact C(4)(a)

| TYPE | | |
|---|---|--|
| <u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment. | <u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment. | <u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment. |

DEVIATION FROM THE STANDARD
 DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

ACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents altered and eliminated Swamp, through clearing, stumping/grubbing, filling (in the form of gravel and other soil materials; crushed, waste and new asphalt; yard waste; stored boats, trucks, and oil tanks; and various other waste debris), grading, creating surface disturbance, and constructing hoop houses. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.

- (2) **Environmental conditions:** Prior to the unauthorized alterations, the Swamp that is the subject of the NOV was entirely undisturbed, containing wetland forest and shrub habitat. It appears that farming occurred within the Swamp until about 1972. After 1972, the area appears to have been abandoned and allowed to naturally revegetate. The Swamp, like adjacent undisturbed wetland areas, would be expected to consist of predominantly broad-leaved deciduous tree species – Red maple, Yellow birch, and Oak. The soils in the Swamp are severely hydric, identified as Rf - Ridgebury, Whitman, and Leicester extremely stony fine sandy loams. The soils in the Swamp were saturated, and water-stained leaves were seen throughout, as well as small springs where water would seep out of the ground and caused some surface flow down slope to the West. The understory surrounding the alterations was mainly herbaceous with few woody shrub species (mainly coastal sweet pepperbush) some of which may have been previously cleared prior to inspection. Many of the maple and birch trees had buttressed roots with water marks showing signs of standing water. The woody vegetation understory was more predominant further to the west (away from disturbance). The altered wetlands and surrounding land area slopes moderately to the west where the ground water and surface water meet up with braided stream channels and eventually Lippitt Brook, which then eventually meanders its way through undisturbed forest and neighborhoods and feeds into Pawtuxet River.

- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.

- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.

- (5) **Duration of the violation:** Full duration unknown – at least 7 years based on a review of aerial photographs showing alterations within the Swamp in 2014. DEM became aware of the violation during its first inspection on December 19, 2018.

- (6) **Areal extent of the violation:** Approximately 41,000 square feet (0.94 acres).

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the noncompliance. Based upon information provided to DEM by Respondents (in correspondence), Respondents had at least some prior knowledge of freshwater wetlands on the Property (identification of a River/Stream by Respondents' consultant). Despite this prior knowledge, Respondents proceeded to undertake improvements on the Property without applying to DEM for a wetland permit. Respondents did not take reasonable and appropriate steps to mitigate the noncompliance. Respondents did not comply with the NIE and continued to use the unauthorized improvements within the freshwater wetlands on the Property (until the date of the sale of the Property). Inspections have revealed that no efforts were made to restore the wetlands on the Property as required by the NIE, and Respondents have not applied for nor obtained a permit from DEM for any of the alterations that are the subject of the NOV.
- (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:** Respondents had complete control over the Property, and the violation was foreseeable. Respondents had knowledge that wetlands were present on the Property, based upon correspondence received from Beausoleil, which referred to information provided to Respondents from their consultants.
- (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 |
|----------------|----------|-------|

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$5,000 | | TYPE I | TYPE II | TYPE III |
|--|--------------|--------------------------------------|--------------------|------------------|
| DEVIATION FROM STANDARD | MAJOR | \$2,500 to \$5,000 \$5,000 | \$1,250 to \$2,500 | \$500 to \$1,250 |
| | MODERATE | \$1,250 to \$2,500 | \$500 to \$1,250 | \$250 to \$500 |
| | MINOR | \$500 to \$1,250 | \$250 to \$500 | \$100 to \$250 |

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations

VIOLATION NOs.: D (1) and D (2) – Fact C(4)(b)

| TYPE | | |
|---|---|--|
| <p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p> | <p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p> | <p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p> |

DEVIATION FROM THE STANDARD
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents altered and eliminated Perimeter Wetland, through clearing, grading, filling (in the form of gravel and other soil materials; crushed, waste and new asphalt; yard waste; stored boats, trucks, and oil tanks; and various other waste debris), creating surface disturbance, and constructing a hoop house. The severity of the alterations to the wetland environment was determined to be of moderate importance to the regulatory program.
- (2) **Environmental conditions:** Prior to the unauthorized alterations, the Perimeter Wetland that is the subject of the NOV was entirely undisturbed, containing upland woodland (forest and shrub) habitat. It appears that farming occurred within the Perimeter Wetland until about 1972. After 1972, the area appears to have been abandoned and allowed to naturally revegetate. The Perimeter Wetland has been undisturbed since the mid 1970's and has fully established upland forest and shrub habitats prior to the recent unauthorized disturbance. This habitat consisted of predominantly broad-leaved deciduous tree species – Red maple, Yellow birch, and Oak species and typical woody understory vegetation.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (5) **Duration of the violation:** Full duration unknown – at least 11 years based on a review of aerial photographs showing alterations within the Perimeter Wetland in 2011. DEM became aware of the violation during its first inspection on December 19, 2018
- (6) **Areal extent of the violation:** Approximately 17,500 square feet.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the noncompliance. Based upon information provided to DEM by Respondents (in correspondence), Respondents had at least some prior knowledge of freshwater wetlands on the Property (identification of a River/Stream by Respondents' consultant). Despite this prior knowledge, Respondents proceeded to undertake improvements on the Property without applying to DEM for a wetland permit. Respondents did not take reasonable and appropriate steps to mitigate the noncompliance. Respondents did not comply with the NIE and continued to use the unauthorized improvements within the freshwater wetlands on the Property (until the date of the sale of the Property). Inspections have revealed that no efforts were made to restore the wetlands on the Property as required by the NIE, and Respondents have not applied for nor obtained a permit from DEM for any of the alterations that are the subject of the NOV.
- (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:** Respondents had complete control over the Property, and the violation was foreseeable. Respondents had knowledge that wetlands were present on the Property, based upon correspondence received from Beausoleil, which referred to information provided to Respondents from their consultants.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

| | | |
|--------------|---------------------------------|--------------|
| MAJOR | <u>X</u> MODERATE | MINOR |
|--------------|---------------------------------|--------------|

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$5,000 | | TYPE I | TYPE II | TYPE III |
|--|-----------------|--------------------------------------|--------------------|------------------|
| DEVIATION FROM STANDARD | MAJOR | \$2,500 to \$5,000 | \$1,250 to \$2,500 | \$500 to \$1,250 |
| | MODERATE | \$1,250 to \$2,500 \$2,500 | \$500 to \$1,250 | \$250 to \$500 |
| | MINOR | \$500 to \$1,250 | \$250 to \$500 | \$100 to \$250 |

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations

VIOLATION NOs.: D (1) and D (2) – Fact C(4)(c)

| TYPE | | |
|--|--|---|
| <p><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p> | <p><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p> | <p><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p> |

DEVIATION FROM THE STANDARD
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents altered and eliminated Forested Wetland, through clearing, stumping/ grubbing, grading, filling (in the form of gravel and other soil materials, fencing, and asphalt), and construction of basketball court, resulting in the entire elimination of this wetland feature. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.
- (2) **Environmental conditions:** The vegetational plant community was eliminated at the time of the case investigation; however, Forested Wetlands are generally dominated by woody tree and shrub species typical of Swamps (see “Swamp” descriptions for this case), that are typically adapted for life in saturated soil conditions, by plant species listed as having a wetland indicator status of Obligate (Obl), Facultative Wetland or Facultative. Prior to the unauthorized alterations, the Forested Wetland that is subject of the NOV were entirely undisturbed. The area historically was cleared and maintained farmland but had been abandoned and has naturally revegetated since the mid 1970’s. Prior to the clearing and complete filling and grading (elimination) of the Forested Wetland, it was previously a depressed area where standing water had collected and persisted for parts of the year. Evidence of surface water inundation and/or saturation, through an obvious signature found on pertinent historical aerial photographs, was obviously present within the boundaries of the Forested Wetland. The remainder of the time the soils were likely saturated. The Forested Wetland was dominated by shrubs and trees surrounding the standing water and emergent vegetation in its most flooded areas.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (5) **Duration of the violation:** Full duration unknown – at least approximately 3 years based on a review of aerial photographs showing alterations within the Forested Wetland in 2018. DEM became aware of the violation during its first inspection on December 19, 2018.
- (6) **Areal extent of the violation:** Approximately 8,000 square feet.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the noncompliance. Based upon information provided to DEM by Respondents (in correspondence), Respondents had at least some prior knowledge of freshwater wetlands on the Property (identification of a River/Stream by Respondents' consultant). Despite this prior knowledge, Respondents proceeded to undertake improvements on the Property without applying to DEM for a wetland permit. Respondents did not take reasonable and appropriate steps to mitigate the noncompliance. Respondents did not comply with the NIE and continued to use the unauthorized improvements within the freshwater wetlands on the Property (until the date of the sale of the Property). Inspections have revealed that no efforts were made to restore the wetlands on the Property as required by the NIE, and Respondents have not applied for nor obtained a permit from DEM for any of the alterations that are the subject of the NOV.
- (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:** Respondents had complete control over the Property, and the violation was foreseeable. Respondents had knowledge that wetlands were present on the Property, based upon correspondence received from Beausoleil, which referred to information provided to Respondents from their consultants.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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