

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

**IN RE: Edward M. Carapezza**

**FILE NO.: OCI-FW-15-62  
AAD NO.: 18-003/FWE**

AMENDED 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 2015, DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent for some of the violations that are the subject of this Amended Notice of Violation (“Amended NOV”). The NIE required specific actions to correct the violations. On 2 December 2015, DEM inspectors met with Respondent at the property to discuss the violations and the required actions in the NIE. On 21 November 2016, DEM sent electronic correspondence to Respondent. The correspondence advised Respondent that none of the violations had been corrected and offered Respondent an opportunity to meet with DEM. Respondent failed to respond to the correspondence. On 27 April 2018, DEM issued a Notice of Violation (“2018 NOV”) to Respondent. Respondent filed an appeal of the 2018 NOV with DEM’s Administrative Adjudication Division, which is currently pending. On 11 February 2019, DEM inspected the property pursuant to an administrative search warrant issued by the court. The inspection revealed additional violations that are the subject of the Amended NOV. Prior to the February inspection, DEM notified Respondent of the violations that were identified during the inspection. As of the date of the Amended NOV, Respondent has not corrected any of the alleged violations.

C. Facts

- (1) The property is located approximately 400 feet and 1,250 feet north of Woodville Road, at 336 Woodville Road and approximately 1,400 feet and 1,900 feet northwest of the intersection of Woodville Road and Tomaquag Road, Assessor’s Plat 8, Lot 36 in Hopkinton, Rhode Island (the “Property”).
- (2) Respondent owns the Property.

- (3) On 23 June 2015 and 2 December 2015, DEM inspected the Property. The inspections revealed the following:
- (a) Clearing, filling (in the form of at least soil material, rocks and boulders), grading, and soil disturbance to create an access road crossing within a Marsh/Swamp/Pond complex. These activities resulted in the alteration of approximately 8,500 square feet of freshwater wetland;
  - (b) Clearing, filling (in the form of at least soil material, rocks and boulders), grading, and soil disturbance to create an access road crossing within Perimeter Wetland. These activities resulted in the alteration of approximately 3,000 square feet of freshwater wetland;
  - (c) Clearing, filling (in the form of at least soil material, rocks and boulders) and grading to create lawn and line shoreline within a Pond and a Swamp. These activities resulted in the alteration of approximately 3,500 square feet of freshwater wetland;
  - (d) Clearing, filling (in the form of at least soil material) and grading to create and maintain a lawn within Perimeter Wetland. These activities resulted in the alteration of approximately 14,000 square feet of freshwater wetland;
  - (e) Installing a wooden bridge with associated fill across a River and within Riverbank Wetland. These activities resulted in the alteration of 360 square feet of freshwater wetland;
  - (f) Filling, grading, soil disturbance and installation of a bridge structure within the Marsh/Swamp/Pond complex described in Fact C (3)(a) above. These activities resulted in the alteration of 500 square feet of freshwater wetland; and
  - (g) Filling, grading and creating rock walls and other features within Riverbank Wetland. These activities resulted in the alteration of at least approximately 5,000 square feet of freshwater wetland.

- (4) On 27 April 2018, DEM issued a Notice of Violation (“2018 NOV”) to Respondent.
- (5) Respondent filed an appeal of the 2018 NOV with DEM’s Administrative Adjudication Division, which is currently pending.
- (6) On 11 February 2019, pursuant to an administrative search warrant issued by the court, DEM inspected the Property. The inspection revealed the following:
  - (a) Creating a crossing resulting in clearing, excavating, and filling (in the form of at least excavated rocks, boulders, and soil material) within Stream and Swamp. These activities resulted in the alteration of approximately 125 linear feet of freshwater wetland;
  - (b) Driving through Streams with heavy machinery without the proper use of best management practices (including moving boulders and rocks out of the way and to the side into adjacent freshwater wetlands) in at least 6 locations. These activities resulted in the alteration of approximately 50 linear feet of freshwater wetland;
  - (c) Driving through Swamp with heavy machinery without the proper use of best management practices (including moving boulders and rocks out of the way and to the side into adjacent freshwater wetlands) resulting in disturbance/rutting of soils and further alterations in several locations. These activities resulted in the alteration of approximately 24,200 square feet of freshwater wetland and
  - (d) Clearing, excavating, filling, and creating soil disturbance within at least Swamp and Perimeter Wetland in several locations. These activities resulted in the alteration of approximately 25,000 square feet of freshwater wetland.
- (7) The activities described in Facts C (3) and C (6) above are not exempt in accordance with the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (the “Freshwater Wetlands Regulations”).
- (8) Respondent did not receive a permit from DEM to alter the freshwater wetlands on the Property.

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) **Freshwater Wetland Regulations, Rule 5.01 [effective 31 December 2001 to 1 June 2007]** – prohibiting activities which may alter freshwater wetlands without a permit from DEM.
- (3) **Freshwater Wetland Regulations, Rule 5.01 [effective 1 June 2007 to 24 June 2009]** – prohibiting activities which may alter freshwater wetlands without a permit from DEM.
- (4) **Freshwater Wetland Regulations, Rule 5.01 [effective 24 June 2009 to 28 December 2010]** – prohibiting activities which may alter freshwater wetlands without a permit from DEM
- (5) **Freshwater Wetland Regulations, Rule 5.01 [effective 28 December 2010 to 6 July 2014]** – prohibiting activities which may alter freshwater wetlands without a permit from DEM.
- (6) ***Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1) [effective 6 July 2014 to Current], Part 1.5(A)(1)*** – prohibiting activities which may alter freshwater wetlands without a permit from DEM.

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, and
- (2) Restore all freshwater wetlands for the alterations described in Fact C (3) above in accordance with the restoration requirements set forth below.

## RESTORATION REQUIREMENTS

- (a) Prior to the commencement of restoration activities, correctly install proper soil erosion and sediment (“SE/S”) controls, in the form of a continuous uninterrupted line of staked haybales, biodegradable filter socks (fiber logs), and/or silt fence (properly toed into native soils), between all unauthorized altered or improved areas to be restored and the adjacent undisturbed freshwater wetlands. The SE/S 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 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 all freshwater wetlands.
  
- (b) At the location of the unauthorized access road and bridge crossing through the Marsh/Swamp/Pond wetland complex, remove all unauthorized fill material from the wetlands, including but not limited to, all components of the bridge, all components of any stone walls, and all soil material, rocks, and boulders. All unauthorized fill material must be removed down to an elevation that matches the adjacent undisturbed wetland grades, to elevations at which original native hydric (organic) soils are encountered. Fill removal operations must begin at the eastern-most limits of the unauthorized road/bridge and proceed in a westerly direction. Prior to initiating restoration work in this location, contact DEM to arrange a pre-restoration site meeting to confirm that SE/S controls have been properly installed and to assure that the restoration proceeds in the proper manner and sequence. As necessary, DEM may direct the installation of sandbags (or another acceptable water control/diversion methodology) in specific areas to allow the required wetland restoration work to proceed under “drier” conditions and prevent further adverse wetland impacts. **All restoration work in this location must take place during an acceptable “low flow” period (generally July 1 through October 31).** All fill material that is removed must be deposited off-site, in an appropriate upland location, outside of all freshwater wetlands.
  
- (c) Following the removal of all unauthorized fill material from the Marsh/Swamp/Pond complex, the affected wetland areas must be re-established and restored to the conditions that existed prior to the initiation of the unauthorized alterations. As necessary, and at the discretion of DEM, the substrate soils remaining following fill removal must be supplemented with an appropriate high-organic plantable soil material. All resulting disturbed surface areas within the affected/restored wetlands must be seeded with an appropriate wetland seed mixture, and then covered with a thick mat of loose straw mulch, which is free of any contaminants that could promote the spread of invasive plant species.

- (d) Remove the unauthorized wooden bridge structure in its entirety, along with any associated fill material (including soil material, rocks, and boulders), from the River and the Riverbank Wetland. All removed bridge components and associated fill materials must be deposited off-site, in an appropriate upland location, outside of all freshwater wetlands. Following fill removal, all affected/disturbed surface areas must be seeded with a suitable wetland seed mixture or wildlife conservation seed mixture (as appropriate), and then covered with a thick mat of loose straw mulch, which is free of any contaminants that could promote the spread of invasive plant species.
- (e) Remove all unauthorized fill material (in the form of at least soil material, rocks, boulders, walls, and lawn components) from the remaining altered Pond, Swamp, Perimeter Wetlands, and Riverbank Wetlands. All unauthorized fill material must be removed down to an elevation that matches the adjacent undisturbed wetland grades, to elevations at which the original native surface soils are encountered (e.g., hydric/organic soil within biological wetland or upland-type topsoil in adjacent buffer areas). Following fill removal, all affected/disturbed surface areas must be seeded with a suitable wetland seed mixture or wildlife conservation seed mixture (as appropriate), and then covered with a thick mat of loose straw mulch, which is free of any contaminants that could promote the spread of invasive plant species.
- (f) Plant all disturbed/altered areas within the affected Perimeter Wetlands and Riverbank Wetlands with trees and shrubs, as follows:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, 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*  
Northern white cedar, *Thuja occidentalis*  
Red maple, *Acer rubrum*  
Box elder, *Acer negundo*  
Black Cherry, *Prunus serotina*  
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*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, 5 feet on center, 4 feet tall after planting, throughout the area 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*  
Highbush blueberry, *Vaccinium corymbosum*  
Lowbush blueberry, *Vaccinium angustifolium*  
Inkberry (Gallberry holly), *Ilex glabra*  
Sweet pepperbush, *Clethra alnifolia*  
Bayberry, *Myrica pennsylvanica*  
Black chokeberry, *Aronia melanocarpa*  
Witchhazel, *Hamamelis virginiana*

In addition, balled and burlapped or transplanted evergreen tree species must be planted in a straight line, 8 feet on center, 5 to 6 feet tall after planting, along the entire outer (landward) edge of the affected Perimeter Wetlands and Riverbank Wetlands. The tree species to be utilized for this screening line must include at least 2 of the following selections:

Northern white cedar, *Thuja occidentalis*  
White pine, *Pinus strobus*  
Pitch Pine, *Pinus rigida*  
Eastern hemlock, *Tsuga canadensis*  
Red cedar, *Juniperus virginiana*

- (g) All areas of disturbed surface soils shall be covered with plantable soil (as necessary), seeded with a wetland seed mix (within restored Swamp surface areas) or a wildlife conservation grass seed mixture (within Perimeter Wetlands and Riverbank Wetlands), and covered with a mat of loose straw mulch (as previously described above).
- (h) Upon final stabilization of disturbed areas, all artificial erosion and sedimentation controls (e.g., silt fences, sandbags, etc.) must be removed from the affected wetlands. Staked haybales, fiber logs, spread hay mulch, and other naturally based/bio-degradable erosion control measures may remain in place to decompose naturally. 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 and all disturbed surfaces must be stabilized as described above.

- (i) 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.
- (j) Retain the services of a qualified environmental (wetlands) consultant, who must be deemed acceptable by DEM, to oversee the required wetland restoration activities, and provide regular restoration inspection reports to DEM, as well as post-restoration monitoring reports, for a 2-year period following restoration completion.

Restore all freshwater wetlands for the alterations described in Fact C (6) above in accordance with the restoration requirements set forth below:

### **RESTORATION REQUIREMENTS**

- (k) Prior to the commencement of restoration activities, correctly install proper soil erosion and sediment (“SE/S”) controls, in the form of a continuous uninterrupted line of staked haybales, biodegradable filter socks (fiber logs), and/or silt fence (properly toed into native soils), between all unauthorized altered or improved areas to be restored and the adjacent undisturbed freshwater wetlands. The SE/S 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 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 all freshwater wetlands.
- (l) At the location of the unauthorized crossing through the Stream and Swamp, remove all unauthorized fill material from the wetlands, including but not limited to, all soil material, rocks, and boulders. All unauthorized fill material must be removed down to an elevation that matches the adjacent undisturbed wetland grades, to elevations at which original native hydric (organic) soils are encountered. The Stream channel must be restored to the proper grades to allow it to flow freely and feed into the original Stream channel and Pond that is situated west of the violation area. Prior to initiating restoration work in this location, DEM must be contacted to arrange a pre-restoration site meeting to confirm that SE/S controls have been properly installed and to assure that the restoration proceeds in the proper manner and sequence. Prior to beginning restoration work within the Stream and adjacent areas, and surface flows must be temporarily diverted or pumped to a portion of the Stream that is situated downstream of the restoration work area. The methodology used to allow work in a “dry condition” must be first authorized by DEM. Once the fill removal is reviewed on-site and approved by DEM, the channel bottom



and all other disturbed wetland restoration areas must be seeded with a proper wetland seed mix then stabilized with a thick layer of straw or jute mesh. Flows may not be introduced into the re-created Stream channel until such time that a dense herbaceous growth (ground cover) has become established on the channel bottom and side slopes and DEM has authorized it. As necessary, DEM may direct the installation of sandbags (or another acceptable water control/diversion methodology) in specific areas to allow the required wetland restoration work to proceed under “drier” conditions and prevent further adverse wetland impacts. **All restoration work in this location must take place during an acceptable “low flow” period (generally July 1 through October 31).**

- (m) At the locations of the unauthorized Stream crossings, remove/move boulders, rocks, and soil material that are obstructing the natural flow and regrade all affected surface areas to re-establish the natural watercourse channels (in their original locations) as directed by DEM. Following the removal/moving of materials, and after the areas have been reviewed and approved by DEM, seed all disturbed wetland areas with an appropriate seed mix and cover with a thick layer of straw which is free of any contaminants that could promote the spread of invasive plant species.
  - (n) At the locations of the unauthorized Swamp crossings, remove/move fill and fix ruts as directed by DEM, grade all surfaces to match the elevations of the surrounding undisturbed wetlands, seed all disturbed areas with an appropriate wetland seed mix, and cover with a thick layer of straw which is free of any contaminants that could promote the spread of invasive plant species.
  - (o) Upon final stabilization of disturbed areas, all artificial erosion and sedimentation controls (e.g., silt fences, sandbags, etc.) must be removed from the affected wetlands. Staked haybales, fiber logs, spread hay mulch, and other naturally based/bio-degradable erosion control measures may remain in place to decompose naturally. 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 and all disturbed surfaces must be stabilized as described above.
- (3) All restored wetland areas, including areas that were cited but no restoration has been required, must be allowed to re-vegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within any other freshwater wetlands on the Property, without first obtaining a valid permit from DEM.
- (4) All the restoration work described above must be completed by 30 May 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:

**\$25,000**

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective 19 March 2021 to Current] (the “Penalty Regulations”) and must be paid to DEM within 30 days of your receipt of the Amended NOV. Payment shall be in the form of a certified check, cashier’s 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 Amended NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

G. Response to Amended NOV

- (1) A response, by each Respondent, to this Amended NOV shall be in accordance with Rule 15 of the Superior Court Rules of Civil Procedure.
- (2) In accordance with Rule 15 of the Superior Court Rules of Civil Procedure, each Respondent shall have 10 days after service of the Amended NOV, unless otherwise ordered or agreed upon, to file a response to the Amended NOV with DEM’s Administrative Adjudication Division:

Administrative Clerk  
DEM - Administrative Adjudication Division  
235 Promenade Street, Room 350  
Providence, RI 02908-5767

- (3) A copy of the response to the Amended NOV 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

- (4) Each Respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.

- (5) Failure to comply with the Amended NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the Amended NOV is being forwarded to the Town of Hopkinton, 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 Amended 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, Esq. 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 of DEM's Office of Compliance and Inspection at (401) 222-1360 extension 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: \_\_\_\_\_  
David E. Chopy, Administrator  
DEM Office of Compliance and Inspection

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

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
the within Amended NOV was forwarded to:

Marisa Desautel, Esquire  
38 Bellevue Avenue  
Newport, RI 02840

\_\_\_\_\_



## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: OCI-FW-15-62

Respondent: Edward M. Carapezza

### 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) through D (6) Alteration Of Wetlands Without A Permit – Facts C(3)(a), (c) and (f)	Type I (\$10,000 Max. Penalty) *	Major	\$10,000	1 violation	\$10,000
D (1) through D (6) Alteration Of Wetlands Without A Permit – Facts C(3)(b), (d) and (g)	Type I (\$5,000 Max. Penalty) *	Major	\$5,000	1 violation	\$5,000
D (1) through D (6) Alteration Of Wetlands Without A Permit – Facts C(6)(a), (b), (c) and (d)	Type I (\$10,000 Max. Penalty) *	Major	\$10,000	1 violation	\$10,000
<b>SUB-TOTAL</b>					<b>\$25,000</b>

\*Maximum Penalties represent the maximum penalty amounts per day, 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 = \$25,000**

# PENALTY MATRIX WORKSHEET

CITATION: Alteration Of Wetlands Without A Permit – Facts C(3)(a), (c) and (f)  
 VIOLATION NOs.: D (1) through D (6)

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

**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:** Respondent altered freshwater wetlands by clearing, filling (in the form of at least soil material, rocks, and boulders), grading and soil disturbance within a Marsh, a Pond, and a Swamp. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.
- (2) **Environmental conditions:** The Marsh, Swamp and Pond were undisturbed prior to the alterations. The alterations involved construction of a road and the creation of a lawn and lining of the shoreline of the Pond with boulders.
- (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 13 years for some alterations based on a review of aerial photographs. DEM first became aware of the alterations on or about 23 June 2015 when we performed an inspection of the Property.
- (6) **Areal extent of the violation:** Approximately 12,500 square feet.

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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 submitted a letter to DEM dated 13 November 2015 in response to the NIE. In the letter, Respondent stated that he knew wetlands were present on the Property and that he had spoken with numerous DEM officials over the years concerning wetland practices, so he should have been aware of the requirements of the Freshwater Wetland Regulations and the need to obtain a permit for the work he undertook. Respondent was advised by DEM during the 23 June 2015 inspection that he could not do any work in the wetlands without a permit – despite this knowledge, Respondent further altered the wetlands by installing a bridge structure without a permit from DEM. Respondent has not taken any steps to mitigate the noncompliance, despite receiving the NIE on 12 November 2015 requiring restoration of the altered wetlands.
- (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 were present on the Property and knowledge of the Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows DEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing. Facts C (3)(a), (c) and (f) identify 3 separate and distinct violations.

<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: Alteration Of Wetlands Without A Permit – Facts C(3)(b), (d) and g)  
 VIOLATION NOs.: D (1) through D (6)

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

**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:** Respondent altered freshwater wetlands by clearing, filling (in the form of at least soil material, rocks, and boulders), grading and soil disturbance within Perimeter Wetland and Riverbank Wetland. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.
- (2) **Environmental conditions:** The Perimeter Wetland and Riverbank Wetland were undisturbed prior to the alterations. The alterations involved construction of a road and the creation of a lawn and a rock wall and other features.
- (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 13 years for some alterations based on a review of aerial photographs. DEM first became aware of the alterations on or about 23 June 2015 when we performed an inspection of the Property.
- (6) **Areal extent of the violation:** Approximately 22,000 square feet.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** DEM does not have specific knowledge that Respondent knew that the Perimeter Wetland and Riverbank Wetland were regulated wetlands, so for this calculation we did not conclude that Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. Respondent has not taken any steps to mitigate the noncompliance, despite receiving the NIE on 12 November 2015 requiring restoration of the altered wetlands.
- (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.

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- (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:** Considered, but not utilized for this calculation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows DEM to assess a penalty for each separate and distinct violation up to a maximum of \$5,000 for violations that are knowing. Facts C (3)(b), (d) and (g) identify 3 separate and distinct violations.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$2,500 to \$5,000 <b>\$5,000</b>	\$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: Alteration Of Wetlands Without A Permit – Facts C(6)(a), (b), (c) and (d)  
 VIOLATION NOs.: D (1) through D (6)

<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>		
<small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<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 by clearing, excavating, and filling (in the form of at least excavated rocks, boulders, and soil material) within Stream, Swamp and Perimeter Wetland and driving through Streams and Swamp with heavy machinery without the proper use of best management practices (including moving boulders and rocks out of the way and to the side into adjacent freshwater wetlands). 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> The Streams, Swamp and Perimeter Wetland were undisturbed prior to the alterations.</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 14 years for some alterations based on a review of aerial photographs.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 175 linear feet of Streams and Swamps and approximately 49,200 square feet of Swamp and Perimeter Wetland.</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. Respondent submitted a letter to DEM dated 13 November 2015 in response to the NIE. In the letter, Respondent stated that he knew wetlands were present on the Property and that he had spoken with numerous DEM officials over the years concerning wetland practices, so he should have been aware of the requirements of the Freshwater Wetland Regulations and the need to obtain a permit for the work he undertook. Respondent has not taken any steps to mitigate the noncompliance, despite being notified by DEM of 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 were present on the Property and knowledge of the Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows DEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing. Facts C (6)(a), (b), (c) and (d) identify 4 separate and distinct violations.

<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