

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Douglas Enterprises, Ltd.
Ironwood Land Co LLC**

**FILE Nos.: OCI-WP-19-33, RIR101385
STW16-049 and FWW16-0074**

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

B. Administrative History

DEM issued a stormwater discharge permit to Douglas Enterprises, Ltd (“Douglas”) to construct a residential subdivision at the property that is the subject of this Amended Notice of Violation (the “Amended NOV”). On 20 March 2019, DEM issued an *Expedited Citation Notice* (“ECN”) to Douglas by certified mail for the violations that are the subject of the Amended NOV. On 26 March 2019, the ECN was delivered. Douglas did not respond to or comply with the ECN, which included the assessment of an administrative penalty. On 9 September 2019, DEM inspected the property and documented additional violations. On 1 July 2021, DEM inspected the property and documented that all construction work was completed.

C. Facts

- (1) The property is located approximately 500 feet south of Teakwood Drive (West) and approximately 600 feet southeast of its intersection with Ironwood Drive, Assessor’s Plat 76, Lot 1 in Coventry, Rhode Island (the "Property").
- (2) On or about 28 March 2016, Douglas, a domestic profit corporation organized pursuant to the laws of the State of Rhode Island, applied to DEM for a permit to construct a 30-unit residential development at the Property (the “Project”).
- (3) On 12 August 2016, DEM issued an *Insignificant Alteration Permit* No. 16-0074 (the “Permit”) to Douglas for the Project. The Permit incorporates the *General Permit for Stormwater Discharge Associated with Construction Activity* No. RIR101385.

- (4) Pursuant to R.I. Gen. Laws §2-1-22(f) and Part 1.7(A)(9) of Rhode Island's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1)* [effective 16 July 2014 to Current] (the "Freshwater Wetland Regulations"), the limit of disturbance, the conditions of approval and any other requirements set forth in any recorded permit shall apply to and be enforceable against all subsequent owners of the land subject to the permit, unless a new or modified permit has been obtained from DEM.
- (5) On 21 November 2016, the Permit was recorded in the land evidence records of the Town of Coventry, Rhode Island for the Property in book no. 2056, pages 884 through 888.
- (6) On or about 17 February 2017, the Property was granted to Ironwood Land Co LLC ("Ironwood"), a domestic limited liability company organized pursuant to the laws of the State of Rhode Island.
- (7) The Permit required Respondents to:
 - (a) install temporary soil erosion and sedimentation controls ("SESCs") in accordance with the Permit and approved plans titled *Whitetail Estates, Leuba Road, Coventry, Rhode Island, Assessor's Plat 76, Lot 1* (the "Approved Plans").
 - (b) regularly conduct SESC inspections, maintain and repair all SESC as necessary to remain in effective operating condition and to prevent harm to adjacent wetlands.
 - (c) keep all records of SESC inspections, maintenance, and repair on site during the extent of coverage of the Permit.
 - (d) keep a signed and updated copy of the approved SESC Plan on site during the extent of coverage of the Permit.
- (8) On 2 January 2019, DEM inspected the Property. The inspection revealed that Respondents failed to:
 - (a) install silt fence or approved equal erosion control measure along the southern limits of disturbance in accordance with the Approved Plans.
 - (b) maintain/repair the SESC along the eastern side of infiltration pond "N", resulting in erosion and deposition of sediments to the Perimeter Wetland associated with the freshwater wetland delineated by the A series wetland (the "A-Series Wetlands") near flags A17 to A18 on the Approved Plans.

- (9) On 9 September 2019, DEM inspected the Property. The inspection revealed that Respondents failed to:
- (a) keep a copy of the SESC plan onsite at all times in accordance with the Permit. At the time of the inspection, DEM’s inspector spoke with Beau DeBlois (“DeBlois”), who stated that he represented Deblois Building Co., he did not know where the SESC plan was, and he did not have time to locate it.
 - (b) install SESCOs in accordance with the Permit and the Approved Plans. The inspection revealed that SESCOs were not installed along the southern and northern portions of the Property.
 - (c) maintain SESCOs in accordance with the Permit and the Approved Plans. The SESCOs in the area between the two infiltration basins failed resulting in soil erosion and deposition of sediments to the Perimeter Wetland associated with the A-Series Wetlands near wetland flags A11 to A13 on the Approved Plans.
 - (d) keep all records of SESC inspections, maintenance, and repair on site. At the time of the inspection, DEM’s inspector spoke with DeBlois, who stated he did not know where the inspection records were, and he did not have time to locate them.
- (10) On 1 July 2021, DEM inspected the Property. The inspection revealed that all work associated with the Project was completed.
- (11) As of the date of the Amended NOV, DEM has not received any documents showing that the SESCOs were properly installed and maintained in accordance with the Permit.
- (12) As of the date of the Amended NOV, DEM has not received any SESC inspection records.

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 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) **R.I. Gen. Laws Section 2-1-21** – prohibiting activities which may alter freshwater wetlands without a permit from DEM.

- (3) ***Water Quality Regulations (250-RICR-150-05-1)*** [effective 19 August 2018 to Current] (the “Water Quality Regulations”)
- (a) **Part 1.13(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of an approval issued by DEM.
 - (b) **Part 1.18(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (4) ***Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1)*** [effective 7 October 2018 to Current] (the “RIPDES Regulations”)
- (a) **Part 1.14(B)(1)** – requiring the permittee to comply with all conditions of the permit.
 - (b) **Part 1.14(E)** – requiring the permittee to take all reasonable steps to minimize or prevent any discharge in violation of the permit.
 - (c) **Part 1.14(F)** – requiring the permittee to at all times maintain in good working order and operate as efficiently as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit.
- (5) **Freshwater Wetlands Regulations, Part 1.5(A)** – prohibiting activities which may alter freshwater wetlands without a permit from DEM.

E. 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:

\$21,750

- (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.

- (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 Amended NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

F. Right to Administrative Hearing – Ironwood

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, Ironwood 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 E 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 Amended 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).
- (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:

Tricia Quest, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Ironwood has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Ironwood must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the Amended NOV. If Ironwood fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the Amended NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to Ironwood and/or violation and any associated administrative penalty proposed in the Amended NOV shall be final as to Ironwood. 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 Amended NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) 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.

G. Response to Amended NOV – Douglas

- (1) A response by Douglas to the 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, Douglas 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:

Tricia Quest, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (4) Douglas 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 Douglas to additional civil and/or criminal penalties.
- (6) 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) Tricia Quest of DEM's Office of Legal Services at (401) 222-6607 or at tricia.quest@dem.ri.gov. All other inquiries should be directed to Patrick J. Hogan of DEM's Office of Compliance and Inspection at (401) 222-1360 extension 2777119 or at patrick.hogan@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 Sections F and 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 Notice of Violation was forwarded by regular mail to:

Douglas Enterprises, Ltd.
C/o Bruce E. Leach, Esq.
Registered Agent for Service
One Turks Head Place, Suite 450
Providence, RI 02903

I hereby certify that on the _____ day of _____
the within Amended Notice of Violation was forwarded by certified mail to:

Ironwood Land Co LLC
C/o McLaughlinQuinn LLC
Resident Agent for Service
148 West River Street, Suite 1E
Providence, RI 02904



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File Nos.: OCI-WP-19-33, RIR101385, STW16-049 and FWW16-0074
 Respondents: Douglas and Ironwood

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 (5) – Failure to install and maintain SESCOs in accordance with the Permit resulting in adverse impacts to buffer wetlands (2 January 2019)	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$6,250	1 violation	\$6,250
D (1) through D (5) – Failure to install and maintain SESCOs in accordance with the Permit resulting in adverse impacts to buffer wetlands (9 September 2019)	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$12,500	1 violation	\$12,500
D (1), D (2), and D (3)(a) – Failure to maintain SESC inspection records on site (9 September 2019)	Type III <i>(\$6,250 Max. Penalty) *</i>	Minor	\$500	1 violation	\$500
D (1), D (2), and D (3)(a) – Failure to keep the SESC Plan onsite (9 September 2019)	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$21,750

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ADMINISTRATIVE PENALTY SUMMARY (continued)

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 have 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 = \$21,750

PENALTY MATRIX WORKSHEET

CITATION: Failure to install and maintain SESC's in accordance with the Permit resulting in adverse impacts to buffer wetlands (2 January 2019)

VIOLATION NOs.: D (1) through D (5)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to properly install and maintain SESC's as required by the Permit, resulting in the discharge of sediments to buffer wetlands. Compliance with the requirements of the Permit is very important to the regulatory program. Preventing adverse impact to buffer wetlands is a primary goal of the regulatory program. (2) Environmental conditions: The Property was an active residential construction site with greater than 5 acres of land disturbance located in the Pawtuxet River South Branch Watershed. About 2.7 acres of the eastern portion of the Property includes a small wetland complex including an unnamed stream of less than 10 feet in width. (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 is unknown. DEM observed the violation during an inspection conducted at the Property on 2 January 2019. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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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. The SESCOs were not properly installed and maintained at the Property resulting in the permit non-compliance and adverse impact to the adjacent buffer zone 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:** Negligence is attributable to Respondents for their failure to comply with the Water Quality Regulations, the RIPDES Regulations, the Freshwater Wetlands Regulations, and the Permit. Respondents had full control over the site and the occurrence of the violations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to install and maintain SESC's in accordance with the Permit resulting in adverse impacts to buffer wetlands (9 September 2019)

VIOLATION NOS.: D (1) through D (5)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to properly install and maintain SESC's as required by the Permit, resulting in the discharge of sediments to buffer wetlands. Compliance with the requirements of the Permit is very important to the regulatory program. Preventing adverse impact to buffer wetlands is a primary goal of the regulatory program. (2) Environmental conditions: The Property was an active residential construction site with greater than 5 acres of land disturbance located in the Pawtuxet River South Branch Watershed. About 2.7 acres of the eastern portion of the Property includes a small wetland complex including an unnamed stream of less than 10 feet in width. (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 is unknown. DEM observed the violation during an inspection conducted at the Property on 9 September 2019. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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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. The SESC's were not properly installed and maintained at the Property resulting in the permit non-compliance and adverse impact to the adjacent buffer zone wetlands. DEM issued an ECN to Douglas on 20 March 2019 for this same noncompliance that was previously observed during an inspection on 2 January 2019. The ECN was delivered to Douglas on 26 March 2019; however, Douglas did not respond to nor comply with the ECN.
- (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:** Negligence is attributable to Respondents for their failure to comply with the Water Quality Regulations, the RIPDES Regulations, the Freshwater Wetlands Regulations, and the Permit. Respondents had full control over the site and the occurrence of the violations.
- (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
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to maintain SESC's inspection records onsite (9 September 2019)
 VIOLATION NOs.: D (1), D (2), and D (3)(a)

TYPE		
<p style="text-align: center;">____ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">____ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u> X </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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to maintain SESC inspection records as required by the Permit. Performing SESC inspections and retaining the associated SESC inspection records are important to the regulatory program. (2) Environmental conditions: Considered, but not utilized for this calculation. (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 is unknown. DEM inspected the Property on 9 September 2019, at which time Deblois did not produce the required SESC inspection records. (6) Areal extent of the violation: Considered, but not utilized for this calculation. <p style="text-align: right; margin-top: 20px;">(continued)</p>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** It is not known if Respondents took any reasonable and appropriate steps to prevent the noncompliance. Deblois stated to DEM's inspector that he did not know where the SESC inspection records were, and he did not have time to locate them.
- (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:** Negligence is attributable to Respondents for their failure to comply with the Water Quality Regulations, the RIPDES Regulations and the Permit. Respondents had full control over the site and the occurrence of the violations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250 \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to maintain the SESC Plan onsite (9 September 2019)

VIOLATION NOs.: D (1), D (2), and D (3)(a)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u> X </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to maintain SESC plan on site as required by the Permit. Maintaining the SESC plan on site is important to the regulatory program. (2) Environmental conditions: Considered, but not utilized for this calculation. (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 is unknown. DEM inspected the Property on 9 September 2019, at which time Deblois did not produce the required SESC plan. (6) Areal extent of the violation: Considered, but not utilized for this calculation. <p style="text-align: right; margin-top: 20px;">(continued)</p>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** It is not known if Respondents took any reasonable and appropriate steps to prevent the noncompliance. Deblois stated to DEM’s inspector that he did not know where the SESC plan was, and he did not have time to locate it.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for their failure to comply with the Water Quality Regulations, the RIPDES Regulations and the Permit. Respondents had full control over the site and the occurrence of the violations.
- (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
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250