

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

**IN RE: William Hogan
Joanne M. Hogan**

FILE NO.: OCI-FW-16-61

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 the DEM's jurisdiction.

B. Administrative History

On 8 March 1996, the DEM issued a freshwater wetlands permit (95-0633) to Wildhava Associates for work on the property that is the subject of this Notice of Violation (“NOV”). William Hogan was a manager of the company. Joanne M. Hogan owns one of the lots. On 16 May 2016, the DEM inspected the property and met with Mr. Hogan. The inspection revealed extensive site activities that resulted in alteration of freshwater wetlands that were identified on the plans that were approved with the permit. Mr. Hogan stated that the work was conducted under the direction of himself or Ms. Hogan.

C. Facts

- (1) The property is located north of Stony Lane, at house Nos. 1361 and 1381, approximately 1,540 feet west of the intersection with Quaker Lane (Route 2), Assessor’s Plat 128, Lots 3, 20 and 21 in the town of North Kingstown (the “Property”).
- (2) Joanne M. Hogan owns Plat 128, Lot 21.
- (3) On 16 May 2016 and 13 July 2016, the DEM inspected the Property. The inspections revealed the following:
 - (a) Filling (in the form of boulders, rocks, soil, and sedimentation), construction (of a bridge) and creating soil disturbances within a **Stream** located on Lots 20 and 21. These activities resulted in the unauthorized alteration of approximately **300 linear feet** of freshwater wetland;

- (b) Clearing, grubbing, stumping, grading, excavating, filling (in the form of soil and boulders), creating soil disturbances and landscaping within **Swamp** (including overlapping **Riverbank Wetland**) located on Lots 20 and 21. These activities resulted in the unauthorized alteration of approximately **1.05 acres** of freshwater wetland;
 - (c) Clearing, grubbing, stumping, grading, filling (in the form of at least soil), creating soil disturbances, and landscaping within **Perimeter Wetland** and **Riverbank Wetland** (portions overlapping) on Lots 20 and 21. These activities resulted in the unauthorized alteration of approximately **1.18 acres** of freshwater wetland;
 - (d) Filling (in the form of soil, slash, logs, mulch, leaves, and various yard debris) within **Swamp** on Lot 3. These activities resulted in the unauthorized alteration of approximately **5,000 square feet** of freshwater wetland;
 - (e) Filling (in the form of soil, slash, logs, mulch, leaves, and various yard debris) within **Perimeter Wetland** (in two locations) on Lot 3. These activities resulted in the unauthorized alteration of approximately **5,000 square feet** of freshwater wetland;
 - (f) Filling (with boulders, rocks, and soil), diverting, damming, ditching, creating soil disturbances (including a downstream crossing), grading and construction (of a bridge) within **Scrabbletown Brook** and its side channels on Lots 20 and 21. These activities resulted in the unauthorized alteration of approximately **700 linear feet** of freshwater wetland;
 - (g) Clearing, grubbing, stumping, filling (in the form of at least soil, rocks, and sod) grading, creating soil disturbances and installing a lawn within a **Swamp** (including overlapping **Riverbank Wetland**) adjacent to Scrabbletown Brook on Lots 20 and 21. These activities resulted in the unauthorized alteration of approximately **38,500 square feet** of freshwater wetland; and
 - (h) Clearing, grubbing, stumping, grading, filling (in the form of at least soil and sod), creating soil disturbances, and installing a lawn within **Riverbank Wetland** (north and south of Scrabbletown Brook, including at least overlapping **Perimeter Wetland**) on Lots 20 and 21. These activities resulted in the unauthorized alteration of approximately **30,000 square feet** of freshwater wetland.
- (4) On 21 October 2016, the DEM received a plan to restore the wetlands on the Property that was prepared and submitted by Joe Casali Engineering, Inc. on behalf of Respondents.
- (5) On 2 November 2016, the DEM inspected the Property. The inspection revealed that portions of the wetlands were properly restored, which included the planting of trees and shrubs (the “Restoration Plantings”).

- (6) On 7 November 2016, the DEM inspected the Property. The inspection revealed that all the required restoration work was substantially completed.
- (7) Respondents did not receive approval from the 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 the DEM.
- (2) **DEM's Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (the "Freshwater Wetlands Regulations"), Rule 5.01** – prohibiting activities which may alter freshwater wetlands without a permit from the 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) If any of the Restoration Plantings fail to survive at least 1 full year, replant and maintain the same plant species until such time that survival is maintained over 1 full year.
- (2) All restored freshwater wetland areas, including replanted areas, must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations are authorized in any wetlands on the Property without first obtaining a valid permit from the DEM unless the activity is exempt under the DEM's Freshwater Wetlands Regulations.

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:

\$14,750

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and

shall be forwarded to the DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.

- (3) 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, each named respondent is entitled to request a hearing before the 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 the 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
One Capitol Hill, 4TH Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (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 the 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 with regard to 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) The original signed NOV is being forwarded to the town of North Kingstown wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 2-1-24, as amended.
- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Christina Hoefsmit at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Mr. Stephen Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-4700 extension 7406.

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, Chief
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

William Hogan
1381 Stony Lane
North Kingstown, RI 02852

Joanne M. Hogan
1381 Stony Lane
North Kingstown, RI 02852

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: OCI-FW-16-61

Respondents: William Hogan and Joanne M. Hogan

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) – Alteration Of Stream Without Permit – Fact C(2)(a)	Type I (\$10,000 Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250
D(1) and D(2) – Alteration Of Swamp Without Permit – Fact C(2)(b)	Type I (\$10,000 Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250
D(1) and D(2) – Alteration Of Perimeter Wetland and Riverbank Wetland Without Permit – Fact C(2)(c)	Type I (\$10,000 Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250
D(1) and D(2) – Alteration Of Swamp Without Permit – Fact C(2)(d)	Type I (\$10,000 Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500
D(1) and D(2) – Alteration Of Perimeter Wetland Without Permit – Fact C(2)(e)	Type I (\$10,000 Max. Penalty)*	Minor	\$1,000	1 violation	\$1,000
D(1) and D(2) – Alteration Of River Without Permit – Fact C(2)(f)	Type I (\$10,000 Max. Penalty)*	Major	\$5,000	1 violation	\$5,000
D(1) and D(2) – Alteration Of Swamp And Riverbank Wetland Without Permit – Fact C(2)(g)	Type I (\$10,000 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
D(1) and D(2) – Alteration Of Perimeter Wetland and Riverbank Wetland Without Permit – C(2)(h)	Type I (\$10,000 Max. Penalty)*	Minor	\$1,000	1 violation	\$1,000
SUB-TOTAL					\$14,750

*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 ARE IN COMPLIANCE. 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 the 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 = \$14,750

PENALTY MATRIX WORKSHEET

CITATION: Alteration Of Stream Without Permit – Fact C(2)(a)

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

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>_____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>_____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands (Stream) without a permit from the DEM. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Stream was undisturbed prior to the alteration. Respondents altered the Stream by filling (in the form of boulders, rocks, soil, and sedimentation), construction (of a bridge) and soil disturbances. These activities have resulted in the unauthorized alteration of at least approximately 300 linear feet of Freshwater Wetland.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 6 months. The DEM first documented the violation on 16 May 2016. The Stream was restored on or about 7 November 2016.</p> <p>(F) Areal extent of the violation: Approximately 300 linear feet.</p>		
<p>(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. Respondents took reasonable and appropriate steps to mitigate the noncompliance by quickly restoring the Stream after being advised of the unauthorized alterations.
- (H) **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.
- (I) **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:** William Hogan was aware that the Property was the subject of a freshwater wetlands permit application (95-0633) which detailed the location of the freshwater wetlands. Respondents had complete control over the project and had an obligation to protect the wetlands on the Property.
- (J) **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> </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$1,250	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Alteration Of Swamp Without Permit – Fact C(2)(b)

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

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		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands (Swamp) without a permit from the DEM. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Swamp was undisturbed forest prior to the alteration. Respondents altered the Swamp (including overlapping Riverbank Wetlands) by clearing, grubbing, stumping, grading, excavating, filling (in the form of soil and boulders), soil disturbances and landscaping.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 6 months. The DEM first documented the violation on 16 May 2016. The Swamp was restored on or about 7 November 2016.</p> <p>(F) Areal extent of the violation: Approximately 1.05 acres.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. Respondents took reasonable and appropriate steps to mitigate the noncompliance by quickly restoring the Swamp after being advised of the unauthorized alterations.
- (H) **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.
- (I) **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:** William Hogan was aware that the Property was the subject of a freshwater wetlands permit application (95-0633) which detailed the location of the freshwater wetlands. Respondents had complete control over the project and had an obligation to protect the wetlands on the Property.
- (J) **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> </u> X <u> </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$1,250	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Alteration Of Perimeter Wetland and Riverbank Wetland Without Permit – Fact C(2)(c)
 VIOLATION NOS.: D (1) and (2)

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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>FACTORS CONSIDERED: Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands (Perimeter Wetland and Riverbank Wetland) without a permit from the DEM. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The portions of the altered Perimeter Wetland and Riverbank Wetland were undisturbed forest prior to the alteration. Respondents altered the Perimeter Wetland and Riverbank Wetland by at least clearing, grubbing, stumping, grading, filling (in the form of at least soil), soil disturbances and landscaping.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 6 months. The DEM first documented the violation on 16 May 2016. The Perimeter Wetland and Riverbank Wetland were restored on or about 7 November 2016.</p> <p>(F) Areal extent of the violation: Approximately 1.18 acres.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. Respondents took reasonable and appropriate steps to mitigate the noncompliance by quickly restoring the Perimeter Wetland and Riverbank Wetland after being advised of the unauthorized alterations.
- (H) **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.
- (I) **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:** William Hogan was aware that the Property was the subject of a freshwater wetlands permit application (95-0633) which detailed the location of the freshwater wetlands. Respondents had complete control over the project and had an obligation to protect the wetlands on the Property.
- (J) **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 \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$1,250	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Alteration Of Swamp Without Permit – Fact C(2)(d)
 VIOLATION NOS.: D (1) and (2)

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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands (Swamp) without a permit from the DEM. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Swamp was undisturbed forest prior to the alteration. Respondents altered the Swamp by at least filling (in the form of soil, slash, logs, mulch, leaves, and various yard debris).</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 6 months. The DEM first documented the violation on 16 May 2016. The Perimeter Wetland and Riverbank Wetland were restored on or about 7 November 2016.</p> <p>(F) Areal extent of the violation: Approximately 5,000 square feet.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. Respondents took reasonable and appropriate steps to mitigate the noncompliance by quickly restoring the Swamp after being advised of the unauthorized alterations.
- (H) **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.
- (I) **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:** William Hogan was aware that the Property was the subject of a freshwater wetlands permit application (95-0633) which detailed the location of the freshwater wetlands. Respondents had complete control over the project and had an obligation to protect the wetlands on the Property.
- (J) **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 \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$2,500	\$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 Perimeter Wetland Without Permit – Fact C(2)(e)
 VIOLATION NOS.: D (1) and (2)

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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands (Perimeter Wetland) without a permit from the DEM. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Perimeter Wetland was undisturbed forest prior to the alteration. Respondents altered the Perimeter Wetland by at least filling (in the form of soil, slash, logs, mulch, leaves, and various yard debris).</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 6 months. The DEM first documented the violation on 16 May 2016. The Perimeter Wetland and Riverbank Wetland were restored on or about 7 November 2016.</p> <p>(F) Areal extent of the violation: Approximately 5,000 square feet.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. Respondents took reasonable and appropriate steps to mitigate the noncompliance by quickly restoring the Perimeter Wetland after being advised of the unauthorized alterations.
- (H) **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.
- (I) **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:** William Hogan was aware that the Property was the subject of a freshwater wetlands permit application (95-0633) which detailed the location of the freshwater wetlands. Respondents had complete control over the project and had an obligation to protect the wetlands on the Property.
- (J) **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 \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$1,000	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Alteration Of River Without Permit – Fact C(2)(f)
 VIOLATION NOs.: D (1) and (2)

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		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands (Scrabbletown Brook) without a permit from the DEM. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: Scrabbletown Brook was undisturbed prior to the alteration. Respondents altered Scrabbletown Brook and its side channels by at least filling (with boulders, rocks, and soil), diverting, damming, ditching, creating soil disturbances (including a downstream crossing), grading and construction (of a bridge).</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 6 months. The DEM first documented the violation on 16 May 2016. The Perimeter Wetland and Riverbank Wetland were restored on or about 7 November 2016.</p> <p>(F) Areal extent of the violation: Approximately 700 linear feet.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. Respondents took reasonable and appropriate steps to mitigate the noncompliance by quickly restoring Scrabbletown Brook after being advised of the unauthorized alterations.
- (H) **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.
- (I) **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:** William Hogan was aware that the Property was the subject of a freshwater wetlands permit application (95-0633) which detailed the location of the freshwater wetlands. Respondents had complete control over the project and had an obligation to protect the wetlands on the Property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Scrabbletown Brook is a cold water fishery known to hold native brook trout.

<u> </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	MAJOR	\$5,000 to \$10,000 \$5,000	\$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 Swamp And Riverbank Wetland Without Permit – Fact C(2)(g)
 VIOLATION NOs.: D (1) and (2)

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		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM's Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands (Swamp) without a permit from the DEM. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Swamp was undisturbed forest prior to the alteration. Respondents altered the Swamp by at least clearing, grubbing, stumping, filling (in the form of at least soil, rocks, and sod), grading, soil disturbances, and creating a lawn.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 6 months. The DEM first documented the violation on 16 May 2016. The Perimeter Wetland and Riverbank Wetland were restored on or about 7 November 2016.</p> <p>(F) Areal extent of the violation: Approximately 38,500 square feet.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. Respondents took reasonable and appropriate steps to mitigate the noncompliance by quickly restoring the Swamp after being advised of the unauthorized alterations.
- (H) **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.
- (I) **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:** William Hogan was aware that the Property was the subject of a freshwater wetlands permit application (95-0633) which detailed the location of the freshwater wetlands. Respondents had complete control over the project and had an obligation to protect the wetlands on the Property.
- (J) **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 \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$1,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Alteration Of Perimeter Wetland and Riverbank Wetland Without Permit – C(2)(h)
 VIOLATION NOs.: D (1) and (2)

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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands (Perimeter Wetland and Riverbank Wetland) without a permit from the DEM. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Perimeter Wetland and Riverbank Wetland was undisturbed forest prior to the unauthorized alteration. Respondents altered the Perimeter Wetland and Riverbank Wetland by at least clearing, grubbing, stumping, grading, filling (in the form of at least soil and sod), soil disturbances, and creating a lawn.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 6 months. The DEM first documented the violation on 16 May 2016. The Perimeter Wetland and Riverbank Wetland were restored on or about 7 November 2016.</p> <p>(F) Areal extent of the violation: Approximately 30,000 square feet.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. Respondents took reasonable and appropriate steps to mitigate the noncompliance by quickly restoring the Perimeter Wetland and Riverbank Wetland after being advised of the unauthorized alterations.
- (H) **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.
- (I) **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:** William Hogan was aware that the Property was the subject of a freshwater wetlands permit application (95-0633) which detailed the location of the freshwater wetlands. Respondents had complete control over the project and had an obligation to protect the wetlands on the Property.
- (J) **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> </u> X <u> </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$1,000	\$500 to \$1,000	\$100 to \$500