

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: HOPKINS HILL ROAD REALTY, LLC  
HOPKINS HILL SAND & STONE, LLC**

**FILE NO.: OCI-WP-18-40**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

On 9 June 2004, DEM issued a permit to HOPKINS HILL ROAD REALTY, LLC (“HHRR”) regarding DEM’s review of a wetland application for the facility that is the subject of this Notice of Violation (“NOV”). In the permit letter, DEM advised HHRR of the need to apply for and receive a separate approval from DEM to discharge stormwater associated with industrial activity at the facility to the wetlands. On 14 June 2018, DEM issued a Letter of Noncompliance (“LNC”) to HHRR for the violations that are the subject of the NOV. On 27 August 2018, HHRR applied to DEM for a permit as allowed in the LNC. On 26 October 2018, DEM issued a letter to HHRR identifying deficiencies in the application. The letter stated that the deficiencies had to be corrected for DEM to proceed with the application review. On 8 March 2019, DEM received electronic correspondence from HHRR’s consultant. The correspondence stated that they were working with HHRR to meet the testing requirements and that additional information would be submitted to DEM soon. As of the date of the NOV, DEM has received no further communication from HHRR or its consultant.

C. Facts

- (1) The property is located at and adjacent to 190 New London Turnpike, Assessor’s Plat 55, Lot 6 (“Parcel 55/6”), Plat 56, Lot 2 (“Parcel 56/2”), Plat 56, Lot 3 (“Parcel 56/3”) and Plat 7, Lot 2 (“Parcel 7/2”) in the Town of West Greenwich, Rhode Island.
- (2) Parcel 55/6 and Parcel 56/3 include a sand and stone quarry (the “Facility”).
- (3) Freshwater wetlands (including one or more streams) are on Parcel 56/2, 56/3 and 7/2 (the “Wetlands”).

- (4) HOPKINS HILL ROAD REALTY, LLC owns Parcel 55/6 and 56/3.
- (5) HOPKINS HILL SAND & STONE, LLC (“HHSS”) operates the Facility.
- (6) James E. Thibault, Jr. owns Parcel 56/2.
- (7) State of Rhode Island Water Resources Board owns Parcel 7/2.
- (8) On 1 March 2004, HHRR applied to DEM to alter the Wetlands for proposed mining of sand and stone on Parcel 55/6 and Parcel 56/3 (the “Wetland Application”).
- (9) On 9 June 2004, DEM approved the Wetland Application. One condition of the approval was that HHRR apply for and receive a separate approval from DEM to discharge stormwater associated with industrial activity at the Facility to the Wetlands.
- (10) On 4 May 2018, DEM inspected the Facility. The inspection revealed that turbid water containing silt and sediment was discharging from the final settling basins towards the Wetlands.
- (11) On 13 July 2018, DEM received correspondence from Millstone Engineering on behalf of HHSS. The correspondence stated that to prevent future discharge, HHSS would eliminate the gap in the v-notch weir for the main settling basin at the Facility.
- (12) On 13 July 2018, HHSS provided notification by electronic correspondence that the v-notch weir was plugged.
- (13) On 27 August 2018, Millstone Engineering applied to DEM on behalf of HHSS for a permit to discharge process water and stormwater from the Facility to the Wetlands. The application included the following information:
  - (a) Water is used as part of the quarry operation to control dust at the Facility and on the crusher and conveyors;
  - (b) All water, including stormwater, is collected and treated in a closed system consisting of several settling basins before it is recirculated into the operation;
  - (c) As part of the annual maintenance of the Facility, some of the water in the basins must be pumped down to allow access to the basins to remove sediment; and
  - (d) The water in the basins would be discharged to the Wetlands.

- (14) On 26 October 2018, DEM issued a letter to HHSS that identified several deficiencies in the application that required a response for DEM to process the application (the “Deficiency Letter”).
- (15) On 5 June 2019, DEM inspected the Facility. The inspection revealed the following:
  - (a) Turbid water containing silt and sediment was in the main settling basin;
  - (b) The v-notch weir had wooden boards secured over a portion of the opening;
  - (c) Water was observed slowly trickling through these boards and into a pipe that leads to the final settling basins prior to discharging towards the Wetlands;
  - (d) The water in the final settling basins was turbid and contained silt and sediment; and
  - (e) The water in the final settling basins was similar in appearance to the water in the main basin.
- (16) Respondents did not receive approval from DEM to alter the Wetlands.
- (17) Respondents did not receive approval from DEM to discharge process water or stormwater from the Facility to the Wetlands.
- (18) As of the date of the NOV, Respondents have not responded to the Deficiency Letter.
- (19) As of the date of the NOV, Respondents have not ceased the discharge of process water and stormwater from the Facility to the Wetlands.

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) **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.

- (3) **R.I. Gen. Laws Section 46-12-5(c)** – prohibiting the construction or installation of any industrial, commercial, or other establishment, any modification or addition thereto, or undertaking any development which may result in the discharge of any pollutant into the waters of the state, unless the discharge is made to a system or means to prevent pollution approved by DEM.
- (4) **Rhode Island Code of Regulations titled *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1) Rule 5.01 [recently amended to Part 1.5(A)(1)]*** – prohibiting activities which may alter freshwater wetlands without a permit from DEM.
- (5) **Rhode Island Code of Regulations titled *Water Quality Regulations (250-RICR-150-05-1)***
  - (a) **Rule 11(B) [recently amended to Part 1.13(B)]** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of a permit issued by DEM.
  - (b) **Rule 13(A) [recently amended to Part 1.15(A)]** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to the waters of the State; or construction, installation or modification of any treatment works without having obtained all required approvals from DEM.
- (6) **Rhode Island Code of Regulations titled *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1), Rule 8(a) [recently amended to Part 1.8(A)]*** – requiring any person who discharges or proposes to discharge pollutants into the waters and who does not have an effective permit to submit a complete application to 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 the discharge of all process water and stormwater from the Facility to the Wetlands. No discharge of process water or stormwater from the Facility to the Wetlands shall occur until a permit has been issued by DEM for the discharge and all controls required pursuant to the permit have been installed and are operational.
- (2) **Within 90 days of receipt of the NOV**, submit a plan to DEM prepared by a qualified wetland scientist to assess the impacts of sedimentation to the Wetlands (the “Sediment Assessment Plan”). The Sediment Assessment Plan must describe the method/s that will be used to estimate the extent of deposition of non-native soil including depth, type and area impacted and include a schedule for completion of the work.

- (3) **Within 30 days of DEM's approval of the Sediment Assessment Plan**, initiate the work in the Sediment Assessment Plan and complete all work in accordance with the approved schedule.
- (4) **Within 30 days of completion of the work in subsection E (3) above**, submit a report of the findings of sediment assessment to DEM (the "Sediment Assessment Report"). DEM will review the Sediment Assessment Report and notify Respondents in writing whether Respondents need to prepare a restoration plan (the "Wetland Restoration Plan"). The Wetland Restoration Plan shall describe the method/s that will be used to remove non-native soil from the Wetlands and provide a schedule for completion of the work. Within 60 days of notification by DEM that the Wetland Restoration Plan is necessary, Respondents shall submit the Wetland Restoration Plan to DEM.
- (5) The plans and reports required in subsections E (2) and E (4) above shall be subject to DEM's review and approval. Upon completing its review, DEM shall provide written notification to Respondents either granting approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies Respondents shall submit to DEM a modified report or additional information to correct the deficiencies.

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:

**\$67,896**

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashiers 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 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.

- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if DEM determines that reasonable efforts have been made to comply promptly with the NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

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

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767

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

- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) 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) Joseph J. LoBianco of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7400.

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 Notice of Violation was forwarded to:

HOPKINS HILL ROAD REALTY, LLC  
c/o David M. Campanella, Esquire, Registered Agent  
222 Jefferson Boulevard  
Warwick, RI 02888

HOPKINS HILL SAND & STONE, LLC  
c/o David M. Campanella, Esquire, Resident Agent  
222 Jefferson Boulevard  
Warwick, RI 02888

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Programs: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution and  
 Freshwater Wetlands  
 File No.: OCI-WP-18-40  
 Respondents: HOPKINS HILL ROAD REALTY, LLC and HOPKINS HILL SAND & STONE,  
 LLC

<b>GRAVITY OF VIOLATION</b>					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) and D (4) – Altering Wetlands Without A Permit	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (2), D (3), D (5) and D (6) – Discharging Pollutants Without A Permit	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$25,000	2 years	\$50,000
<b><i>SUB-TOTAL</i></b>					<b>\$60,000</b>

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

## ADMINISTRATIVE PENALTY SUMMARY (continued)

<b>ECONOMIC BENEFIT FROM NON-COMPLIANCE</b>			
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 NON-COMPLIANCE; OR			
- THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.			
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>		<i>AMOUNT</i>
<p>Failing to perform quarterly testing of the discharge. The economic benefit of noncompliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Capital Investment</li> <li>▪ One-Time Nondepreciable Expense</li> <li>▪ Annual Recurring Costs</li> <li>▪ First Month of Non-compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	<p>For profit, other than a C Corp.</p> <p>\$2,092</p> <p>May 2018</p> <p>1 January 2022</p> <p>1 January 2022</p> <p>8.1%</p>	<p>\$6,629</p>
<p>Failing to pay annual permit fee. The economic benefit of noncompliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Capital Investment</li> <li>▪ One-Time Nondepreciable Expense</li> <li>▪ Annual Recurring Costs</li> <li>▪ First Month of Non-compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	<p>For profit, other than a C Corp.</p> <p>\$400</p> <p>May 2018</p> <p>1 January 2022</p> <p>1 January 2022</p> <p>8.1%</p>	<p>\$1,267</p>
<b>SUB-TOTAL</b>			<b>\$7,896</b>

## **ADMINISTRATIVE PENALTY SUMMARY (continued)**

### **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 = \$67,896**

# PENALTY MATRIX WORKSHEET

CITATION: Altering Wetlands Without A Permit

VIOLATION NO.: D (1) and D (4)

TYPE		
<p><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE III</b></p> <p><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><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i>.</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> Respondents altered freshwater wetlands by discharging stormwater and process water from the Facility to the wetlands without a permit. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> The Facility is engaged in the mining and processing of stone and gravel. Downgradient of the Facility are extensive freshwater wetlands tributary to Carr River. Carr River and the surface waters within the wetlands are classified as Class A in the Rhode Island Code of Regulations titled <i>Water Quality Regulations (250-RICR-150-05-1)</i>. Among other uses, these waters are designated for fish and wildlife habitat and primary and secondary contact recreational activities. These waters shall have excellent aesthetic value. Native brook trout were observed by DEM on 23 May 2007 in one of the larger streams. Trails leading through the wetlands are used by hikers to reach the Big River Management Area.</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> Fine grained soil. Turbid water affects the physical and biological characteristics of a waterbody which negatively impacts fish and wildlife and aesthetics.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – at least 2 years. DEM inspected the Facility on 4 May 2018.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		
<p>(continued)</p>		

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- (7) **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 and/or mitigate the noncompliance. Respondents were advised by DEM in a permit approval letter issued on 9 June 2004 to apply for and obtain a separate permit from DEM for the discharge of stormwater from the Facility to the Wetlands. In the LNC issued by DEM Respondents were advised to either permanently cease the discharge of stormwater and process water from the Facility or apply for a permit. On 27 August 2018, Respondents applied to DEM for a permit; however, Respondents have failed to respond to a deficiency letter DEM issued to Respondents on 26 October 2018 regarding the application. An inspection by DEM on 5 June 2019 revealed that the process water and stormwater discharges from the Facility were still ongoing.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the occurrence of the violation and the violation was foreseeable. Negligence is attributable to Respondents for the failure to comply with the law and DEM regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>  X  </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$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: Discharging Pollutants Without A Permit  
 VIOLATION NO.: D (2), D (3), D (5) and D (6)

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

**FACTORS CONSIDERED:**

Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents discharged pollutants (in the form of fine-grained soil) associated with stormwater and process water from the Facility to the waters of the State without a permit from DEM. Preventing the discharge of pollutants to the waters of the State without a permit from DEM is of major importance to the regulatory program.
- (2) **Environmental conditions:** The Facility is engaged in the mining and processing of stone and gravel. Downgradient of the Facility are extensive freshwater wetlands tributary to Carr River. Carr River and the surface waters within the wetlands are classified as Class A in the Rhode Island Code of Regulations titled *Water Quality Regulations (250-RICR-150-05-1)*. Among other uses, these waters are designated for fish and wildlife habitat and primary and secondary contact recreational activities. These waters shall have excellent aesthetic value. Native brook trout were observed by DEM on 23 May 2007 in one of the larger streams. Trails leading through the wetlands are used by hikers to reach the Big River Management Area.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Fine grained soil. Turbid water affects the physical and biological characteristics of a waterbody which negatively impacts fish and wildlife and aesthetics.
- (5) **Duration of the violation:** Full duration unknown – at least 2 years. DEM inspected the Facility on 4 May 2018.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **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 and/or mitigate the noncompliance. Respondents were advised by DEM in a permit approval letter issued on 9 June 2004 to apply for and obtain a separate permit from DEM for the discharge of stormwater from the Facility to the Wetlands. In the LNC issued by DEM Respondents were advised to either permanently cease the discharge of stormwater and process water from the Facility or apply for a permit. On 27 August 2018, Respondents applied to DEM for a permit; however, Respondents have failed to respond to a deficiency letter DEM issued to Respondents on 26 October 2018 regarding the application. An inspection by DEM on 5 June 2019 revealed that the process water and stormwater discharges from the Facility were still ongoing.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the occurrence of the violation and the violation was foreseeable. Negligence is attributable to Respondents for the failure to comply with the law and DEM regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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