

- (5) On October 11, 2019, DEM advised Hopkins in a written letter that the Permit was transferred automatically from Drywater to Hopkins upon sale of the Property.
- (6) Dig Rite Company Inc. (“Dig Rite”), a domestic profit corporation organized pursuant to the laws of the State of Rhode Island, is the contractor and operator for the Project.
- (7) The Permit requires Respondents to, among other things:
 - (a) install soil erosion and sediment controls (“SESC”) in accordance with the Permit and approved plan titled *Hopkins Pond 27 Unit Condo Development A.P. 44/4 Lot 26 Central Avenue Johnston, Rhode Island* prepared by Advanced Civil Design, Inc. (the “Approved Plans”);
 - (b) regularly conduct inspections, maintain and repair all SESC’s as necessary to minimize soil erosion and sedimentation; and
 - (c) at all times, maintain SESC inspection and maintenance records on site and available for DEM inspection.
- (8) On January 10, 2020, DEM inspected the Property. The inspection revealed:
 - (a) SESC’s were improperly operated and maintained along the northern portion of the Property adjacent to Dry Brook, and along the southeastern limits of work where SESC’s had been overtopped with boulders; and
 - (b) no records of SESC inspections and maintenance were on site and available for DEM review. At the time of the inspection, DEM’s inspector requested to inspect the SESC records and was informed by Maurizio Maglioli of Dig Rite that the SESC records were located offsite. DEM’s inspector requested that the SESC records be submitted to DEM electronically.
- (9) On July 17, 2020, DEM inspected the Property. The inspection revealed:
 - (a) SESC’s in several areas in the northern portion of the Property were in poor condition, knocked down and/or damaged; and
 - (b) detention ponds on the Property were nearly full of accumulated sediment.
- (10) On July 30, 2020, Dig Rite submitted copies of SESC inspection records to DEM by electronic mail for inspections conducted on January 21, 2020, January 26, 2020, May 14, 2020, May 27, 2020, and July 25, 2020.
- (11) As of the date of the NOV, DEM has not received any SESC inspection records for any inspections conducted prior to January 21, 2020.

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) ***Water Quality Regulations (250-RICR-150-05-1) [effective August 19, 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.
- (3) ***Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1) [effective October 7, 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.

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** repair, replace, supplement, or modify all SESC's at the Property as necessary to minimize soil erosion and to prevent sedimentation beyond the approved limit of disturbance and bring the site into full compliance with the Permit.

- (2) **At all times** inspect, maintain, and repair as necessary, all SESC's at the Property for the duration of the Project and until the Permit is terminated. This requirement includes removal of accumulated sediment from any detention ponds on the Property which have become full.
- (3) **At all times** maintain all SESC inspection and maintenance records on site and available for DEM review for the duration of the Project and until the Permit is terminated.

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:

\$5,500

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective March 19, 2021 to Current] (the "Penalty Regulations") 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, cashier's check, or money order made payable to the "General Treasury - Water & Air Protection Program" and shall be forwarded to the DEM 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 *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* [effective November 27, 2014 to Current].
- (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, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) 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 or at joseph.lobianco@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 77119 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 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 Pond Development, LLC
c/o John P. Tomasso, Resident Agent
1258 Elmwood Avenue
Providence, RI 02903

Dig Rite Company Inc.
c/o Tracy Pine, Registered Agent
190 Beaufort Street
Providence, RI 02908

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File Nos.: OCI-WP-19-114, RIR101674, STW17-219 and FWW 17-0274
 Respondents: Hopkins Pond Development, LLC and Dig Rite Company Inc.

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) – D(3) – Failure to maintain and repair SESC's in accordance with the Permit	Type I (\$25,000 Max. Penalty) *	Minor	\$2,500	2 violations	\$5,000
D(1), D(2), and D(3)(a) – Failure to maintain SESC inspection records	Type III (\$6,250 Max. Penalty) *	Minor	\$500	1 violation	\$500
SUB-TOTAL					\$5,500

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that 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 = \$5,500

PENALTY MATRIX WORKSHEET

CITATION: Failure to maintain and repair SESC's in accordance with the Permit

VIOLATION NOs.: D(1) – D(3)

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

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to properly maintain and repair SESC's to prevent water pollution as required by the Permit. Compliance with the requirements of the Permit is important to the regulatory program. Preventing water pollution is the primary goal of the regulatory program.
- (2) **Environmental conditions:** The Property is an active residential condominium construction site with greater than five acres of land disturbance located adjacent to Dry Brook in Pocasset River Subwatershed.
- (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 violations on January 10, 2020 and July 17, 2020.
- (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 did not take reasonable and appropriate steps to prevent the noncompliance. The SESC's were not properly being maintained and in were found to be in disrepair. Hopkins received an ECN on February 11, 2020 for the permit non-compliance that DEM documented on January 10, 2020. The ECN included a requirement to correct the permit non-compliance and pay a penalty of \$3,000. Hopkins failed to comply with the ECN, and an inspection performed by DEM on July 17, 2020 revealed continued permit non-compliance.
- (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 failure to comply with Water Quality Regulations, RIPDES Regulations and the Permit. Respondent has 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 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

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

TYPE		
<u> </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> X </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.

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to maintain SESC inspection records as required by the Permit. SESC inspections and retention of the associated SESC inspection records is important to the regulatory program and required by the Permit.
- (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 January 10, 2020 and July 17, 2020, at which times Dig Rite did not produce the required SESC inspection records. Subsequent to the July 17, 2020 inspection, Dig Rite provided a limited set of SESC inspection records for January 21, 2020, January 26, 2020, May 14, 2020, May 27, 2020 and July 25, 2020. DEM only assessed a single violation for the lack of the SESC inspection records.
- (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:** It is not known if Respondents took any reasonable and appropriate steps to prevent the noncompliance. Dig Rite did partially mitigate the non-compliance by submittal of a limited number of inspection reports after the July 17, 2020 inspection.
- (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 failure to comply with Water Quality Regulations, RIPDES Regulations and the Permit. Respondent has 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
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	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