

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

**IN RE: Mike's Professional Tree Service, Inc.**

**FILE NOs.: FW-14-9 and SW-13-88  
X-ref FW-C14-0008**

NOTICE OF VIOLATION

A. Introduction

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

B. Facts

- (1) The property is located approximately 600 feet southeast of the intersection of Airport Road and Milton Lane, Assessor's Plat 44, Lot 1, Unit 3 in the town of Coventry, Rhode Island (the "Property").
- (2) The Respondent owns the Property.
- (3) The Property includes a pond located on the northern portion of the Property (the "North Pond") and a second pond located on the southern portion of the Property (the "South Pond"). The North Pond and the South Pond are separated by an earthen berm.
- (4) On 5 July 2013 the DEM issued Insignificant Alteration Permit No. 13-0099 (the "Permit") to the Respondent. The Permit authorized the construction of 1 dry hydrant within Perimeter Wetland associated with the North Pond (the "North Perimeter Wetland").
- (5) On 5 September 2013 the DEM issued Insignificant Alteration Permit No. 13-0131 (the "Revised Permit") to the Respondent. The Revised Permit authorized the construction of a sediment forebay and detention basin, a sand filter, a parking area, and 2 dry hydrants within the North Perimeter Wetland and the Perimeter Wetland associated with the South Pond (the "South Perimeter Wetland"). The Revised Permit superseded the original Permit.

- (6) The Revised Permit required the Respondent to:
- (a) Notify the DEM immediately prior to the commencement of the work (the “Permitted Work”);
  - (b) Erect or post a sign in a conspicuous location on the Property identifying the Revised Permit (the “Permit Sign”);
  - (c) Install temporary erosion and sediment controls (“E&S Controls”);
  - (d) Construct the proposed work in the locations shown on the approved plan; and
  - (e) Record the Revised Permit in the land evidence records of the town of Coventry and provide a copy of the recorded permit to the DEM.
- (7) The DEM inspected the Property on 5 December 2013 and 13 January 2014. The inspections revealed the following:
- (a) Solid waste deposited on the ground consisting of construction and demolition debris (painted wood, particle board, plywood), metal, plastic pipe, insulation, ceiling tile and clothing (the “C&D Waste”). Some of the C&D waste was within the South Perimeter Wetland. The amount of C&D Waste was approximately 33 cubic yards;
  - (b) Solid waste deposited on the ground consisting of leaf and yard waste, tree waste, paper leaf bags and plastic waste (the “Organic Waste”). Some of the Organic Waste was within the South Perimeter Wetland. The amount of Organic Waste was approximately 648 cubic yards;
  - (c) The Organic Waste was arranged in windrows and was undergoing passive composting;
  - (d) Clearing, filling (in the form of at least a concrete retaining wall, soil material, rocks, boulders, and other debris material) and grading within a freshwater wetland consisting in part of the North Pond. This activity has resulted in the unauthorized alteration of approximately 8,200 square feet of freshwater wetland;
  - (e) Clearing, filling (in the form of at least a concrete retaining wall, timber, soil material, rocks, boulders, and other debris material) and grading within the North Perimeter Wetland. This activity has resulted in the unauthorized alteration of approximately 37,200 square feet of freshwater wetland;

- (f) Filling (in the form of at least timber, soil material, rocks, boulders, construction debris, and other debris material) within the South Perimeter Wetland. This activity has resulted in the unauthorized alteration of approximately 5,700 square feet of freshwater wetland;
  - (g) No E&S Controls were installed; and
  - (h) No Permit Sign was posted.
- (8) Review of the DEM records also revealed the following:
- (a) No copy of the recorded Revised Permit was submitted to the DEM; and
  - (b) The DEM was not notified prior to the commencement of the Permitted Work.
- (9) The Respondent did not receive approval from the DEM to alter freshwater wetlands on the Property in the areas specified above.
- (10) The Respondent does not have a license or registration from the DEM to operate a solid waste management facility for the acceptance, processing or disposal of the C&D Waste.
- (11) The Respondent does not have a license or registration from the DEM to operate a composting facility for the acceptance, processing or disposal of the Organic Waste.
- (12) As of the date of this Notice of Violation (“NOV”), the Respondent continues to operate a solid waste management facility for the acceptance, processing and disposal of the C&D Waste.
- (13) As of the date of this NOV, the Respondent continues to operate a composting facility for the acceptance, processing and disposal of the Organic Waste.

C. 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, Rule 5.01A** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (3) **DEM’s Freshwater Wetland Regulations, Rule 9.04B** – requiring an applicant to comply with all conditions of a permit.

- (4) **R.I. General Laws Section 23-18.9-5(a)** - prohibiting the disposal of solid waste at other than a licensed solid waste management facility.
- (5) **R.I. General Laws Section 23-18.9-8(a)** – prohibiting the operation of any solid waste management facility or construction and demolition debris processing facility without first having obtained a license or registration to operate from the DEM.
- (6) **DEM’s Solid Waste Regulation 1.4.01** – prohibiting the operation of any solid waste management facility or composting facility without first having obtained a license or registration from the DEM.
- (7) **DEM’s Solid Waste Regulation 1.4.05(a)** – prohibiting the operation of facilities that accept or store co-mingled recyclable materials, including wood waste and construction and demolition debris, without obtaining a license, registration, or approval from the DEM.
- (8) **DEM’s Solid Waste Regulation 1.4.05(b)** – prohibiting the operation of facilities that accumulate material speculatively and/or facilities that accept or store co-mingled recyclable materials and operate outside the confines of a closed structure without obtaining a license, registration, or approval from the DEM.

D. 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:

**FRESHWATER WETLANDS**

- (1) **IMMEDIATELY** cease and desist from any further alteration of the above described freshwater wetlands, and
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.
  - (a) Prior to the commencement of restoration, install a continuous uninterrupted line of staked haybales or silt fence between all areas to be restored and the adjacent undisturbed freshwater wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced) during and following the completion of the required wetland restoration activities, and until such time that all surrounding areas are properly stabilized. At the discretion and direction of the DEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect all wetlands.
  - (b) Remove all unauthorized fill (including, but not limited to, concrete retaining walls, timber (logs), soil material, rocks, boulders, construction debris, and other debris material) from all wetlands on the Property. All fill

material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.

- (c) Following fill removal from the freshwater wetlands all disturbed soils within the North Perimeter Wetland and the South Perimeter Wetland shall be loamed (if necessary), seeded with a wildlife conservation grass seed mixture, and covered with a mat of loose hay mulch. Hydroseed, containing the proper seed components and mixed with a proper tackifier (stabilizing mulch material), may be utilized in appropriate areas in lieu of the above stabilization measures. If necessary, steeply sloping areas or denuded/disturbed areas must be covered with excelsior matting or jute mesh. In addition, a wetland seed mix must be applied to the surface of all restored areas within the freshwater wetland of the North Pond.
- (d) All areas that were cleared in the North Perimeter Wetland and the South Perimeter Wetland must be replanted with trees and shrubs as required below:

Balled and burlapped or transplanted tree species must be planted in a straight line, 8 feet on center, 4 feet tall after planting, along the outer edge of the previously vegetated wetlands. Tree species must include an equal distribution of at least 2 of the following selections:

White pine, *Pinus strobus*  
Red cedar, *Juniperus virginiana*  
Northern white cedar, *Thuja occidentalis*

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, 4 feet tall after planting, throughout the unauthorized cleared and altered areas within the wetlands. Tree species must include an equal distribution of at least 3 of the following selections:

White pine, *Pinus strobus*  
Red Maple, *Acer rubrum*  
Red cedar, *Juniperus virginiana*  
Northern red oak, *Quercus rubra*  
White oak, *Quercus alba*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, 5 feet on center, 3 feet tall after planting, throughout the unauthorized cleared and altered areas within the wetlands. Shrub species must include an equal distribution of at least 3 of the following selections:

Red Osier Dogwood, *Cornus stolonifera*  
Sweet Pepperbush, *Clethra alnifolia*

Arrowwood, *Viburnum dentatum*  
Wild raisin, *Viburnum cassinoides*  
Winterberry, *Ilex verticillata*  
Highbush blueberry, *Vaccinium corymbosum*  
Lowbush blueberry, *Vaccinium angustifolium*  
Witchhazel, *Hamamelis virginiana*

- (e) If any or all of the required plantings fail to survive at least 2 years from the time that planting has been verified by the DEM, the same plant species shall be replanted and maintained until such time that survival is maintained over 2 full years.
- (f) All restored wetland areas, including replanted areas, must be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within other freshwater wetlands on the Property, without first obtaining a permit from the DEM.
- (g) Upon stabilization of all disturbed areas all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) must be removed from the freshwater wetlands. Staked haybales, spread hay mulch, and other naturally-based/bio-degradable erosion control measures may remain in place to decompose naturally. Prior to the removal of the controls and/or prior to the contractor vacating the site, all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.
- (h) The above restoration work shall be completed prior to **1 June 2014**.
- (i) Contact Mr. Joshua Burgoyne at 222-1360 ext. 7706 prior to the commencement of the wetland restoration to ensure proper supervision and to obtain required restoration details.

#### **SOLID WASTE**

- (3) **IMMEDIATELY** cease the disposal of solid waste and the operation of a solid waste management facility, construction and demolition debris processing facility, and composting facility.
- (4) **Within 60 days of receipt of the NOV**, remove all solid waste from the Property and dispose of the solid waste at a licensed solid waste management facility.
- (5) **Within 10 days of the completion of the removal of all solid waste on the Property**, submit disposal documentation to the DEM's Office of Compliance and Inspection.

- (6) Contact Mr. Daniel Lawton at 222-1360 ext. 7262 for guidance on the solid waste removal. No work shall commence until such time that you have met in the field with the 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:

**Seventy-Two Thousand Two Hundred Dollars (\$72,200.00)**

- (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 this NOV. Payment shall be in the form of a certified check, cashier's check or money order. The first payment shall be in the amount of \$22,200.00 and made payable to the "General Treasury - Water & Air Protection Program Account". The second payment shall be in the amount of \$50,000.00 and made payable to the "General Treasury – Environmental Response Fund". The payments 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 the Respondent in this 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 the DEM determines that reasonable efforts have been made to comply promptly with this NOV.

F. 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 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 the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this 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, 2<sup>ND</sup> 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 Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Richard M. Bianculli Jr., 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 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 this 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 (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of this NOV is being forwarded to the town of Coventry 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 Sections 2-1-24 and 23-18.9-13, as amended.



- (7) This 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) Richard Bianculli at the DEM Office of Legal Services at (401) 222-6607. Freshwater wetlands inquiries should be directed to Mr. Joshua Burgoyne or Mr. Harold Ellis of the DEM Office of Compliance and Inspection at 222-1360 extensions 7706 and 7401, respectively. Solid waste inquiries should be directed to Mr. Daniel Lawton at 222-1360 extension 7262.

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 F above.

FOR THE DIRECTOR

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David E. Chopy, Chief  
DEM Office of Compliance and Inspection

Date: \_\_\_\_\_

CERTIFICATION

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

Mike's Professional Tree Service, Inc.  
C/o Fred J. Volpe, Esq., Registered Agent  
130 Tower Hill Road  
North Kingstown, RI 02852

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Programs: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS AND SOLID WASTE

File Nos.: FW-14-9 and SW-13-88, X-ref FW C14-0008

Respondent: Mike's Professional Tree Service, 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	
C(1), C(2) and C(3) – Alteration of North Pond and Freshwater Wetland	Type I (\$10,000 Max. Penalty) <sup>1</sup>	Major	\$7,500	1 violation	\$7,500.00
C(1), C(2) and C(3) – Alteration of North Perimeter Wetland	Type I (\$10,000 Max. Penalty) <sup>1</sup>	Major	\$10,000	1 violation	\$10,000.00
C(1), C(2) and C(3) – Alteration of South Perimeter Wetland	Type I (\$10,000 Max. Penalty) <sup>1</sup>	Minor	\$2,500	1 violation	\$2,500.00
C(3) – Failure to install erosion and sediment controls	Type I (\$10,000 Max. Penalty) <sup>1</sup>	Minor	\$1,000	1 violation	\$1,000.00
C(3) – Failure to post a sign	Type III (\$10,000 Max. Penalty) <sup>1</sup>	Minor	\$300	1 violation	\$300.00
C(3) – Failure to provide copy of recorded permit	Type III (\$10,000 Max. Penalty) <sup>1</sup>	Minor	\$200	1 violation	\$200.00
C(3) – Failure to notify DEM prior to commencement of work	Type II (\$10,000 Max. Penalty) <sup>1</sup>	Minor	\$700	1 violation	\$700.00
C(4) – Disposal of solid waste at other than a licensed solid waste management facility	Type I (\$25,000 Max. Penalty) <sup>2</sup>	Major	\$25,000	1 violation	\$25,000
C(5) to C(8) – Operating a solid waste management facility, composting facility or C&D facility without a license or registration from DEM	Type I (\$25,000 Max. Penalty) <sup>2</sup>	Major	\$25,000	1 violation	\$25,000
<b>SUB-TOTAL</b>					<b>\$72,200.00</b>

<sup>1</sup> Maximum Penalties represent the maximum penalty amounts per violation.

<sup>2</sup> 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 the Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted can not 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= \$72,200.00**

**PENALTY MATRIX WORKSHEET**

CITATION: Alteration of North Pond and Freshwater Wetland

VIOLATION NO.: C (1), (2) and (3)

<b>TYPE</b>		
<p><b><u>X</u> TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent altered freshwater wetlands by clearing, filling (in the form of at least a concrete retaining wall, soil material, rocks, boulders, and other debris material), and grading within a freshwater wetland consisting in part of North Pond. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> The freshwater wetland was previously an undisturbed pond and freshwater wetland prior to the unauthorized alteration.</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> Full duration unknown. The DEM first documented the violation on 13 January 2014.</p> <p>(F) <b>Areal extent of the violation:</b> The aerial extent of the violation is approximately 8,200 square feet.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. The Respondent obtained permits on 5 July 2013 and 5 September 2013. The plans approved with the permits clearly show the limit of disturbance (LOD). Despite the LOD, the Respondent failed to protect the wetlands.
- (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:** The Respondent's president, Michael Baird, or one of the companies under his control have an extensive history of failing to comply with Rhode Island's Freshwater Wetlands Acts and the DEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*. The DEM issued informal notices to Mr. Baird or one of his companies on 9 October 1997, 10 March 2004, 23 September 2004, 16 March 2006, 23 July 2008, 16 September 2009, and 25 March 2011 for freshwater wetlands violations at various sites owned and/or operated by Mr. Baird or one of his companies. The DEM issued a formal notice of violation to one of Mr. Baird's companies on 5 May 2011 for filling in an emergent plant community.
- (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:** The Respondent had complete control over the project. The Respondent received 2 permits from the DEM that did not authorize the work alleged in this NOV, was aware of the LOD, 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.

<input checked="" type="checkbox"/> <b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$7,500</b>	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

**PENALTY MATRIX WORKSHEET**

CITATION: Alteration of North Perimeter Wetland

VIOLATION NO.: C (1), (2), and (3)

<b>TYPE</b>		
<p><u>  X  </u> <b>TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent altered freshwater wetlands by clearing, filling (in the form of at least a concrete retaining wall, timber, soil material, rocks, boulders, and other debris material), and grading within the North Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Much of the North Perimeter Wetland was previously an undisturbed forested area prior to the unauthorized alteration.</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> Full duration unknown. The DEM first documented the violation on 13 January 2014.</p> <p>(F) <b>Areal extent of the violation:</b> The aerial extent of the violation is approximately 37,200 square feet.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. The Respondent obtained permits on 5 July 2013 and 5 September 2013. The plans approved with the permits clearly show the limit of disturbance (LOD). Despite the LOD, the Respondent failed to protect the wetlands.
- (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:** The Respondent's president, Michael Baird, or one of the companies under his control have an extensive history of failing to comply with Rhode Island's Freshwater Wetlands Acts and the DEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*. The DEM issued informal notices to Mr. Baird or one of his companies on 9 October 1997, 10 March 2004, 23 September 2004, 16 March 2006, 23 July 2008, 16 September 2009, and 25 March 2011 for freshwater wetlands violations at various sites owned and/or operated by Mr. Baird or one of his companies. The DEM issued a formal notice of violation to one of Mr. Baird's companies on 5 May 2011 for filling in an emergent plant community.
- (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:** The Respondent had complete control over the project. The Respondent received 2 permits from the DEM that did not authorize the work alleged in this NOV, was aware of the LOD, 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.

<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: Alteration of South Perimeter Wetland

VIOLATION NO.: C (1), (2), and (3)

<b>TYPE</b>		
<p><b><u>X</u> TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent altered freshwater wetlands by filling (in the form of at least timber, soil material, rocks, boulders, construction debris, and other debris material), within the South Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Much of the South Perimeter Wetland was previously in a disturbed condition prior to the unauthorized alteration.</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> Full duration unknown. The DEM first documented the violation on 13 January 2014.</p> <p>(F) <b>Areal extent of the violation:</b> The aerial extent of the violation is approximately 5,700 square feet.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. The Respondent obtained permits on 5 July 2013 and 5 September 2013. The plans approved with the permits clearly show the limit of disturbance (LOD). Despite the LOD, the Respondent failed to protect the wetlands.
- (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:** The Respondent's president, Michael Baird, or one of the companies under his control have an extensive history of failing to comply with Rhode Island's Freshwater Wetlands Acts and the DEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*. The DEM issued informal notices to Mr. Baird or one of his companies on 9 October 1997, 10 March 2004, 23 September 2004, 16 March 2006, 23 July 2008, 16 September 2009, and 25 March 2011 for freshwater wetlands violations at various sites owned and/or operated by Mr. Baird or one of his companies. The DEM issued a formal notice of violation to one of Mr. Baird's companies on 5 May 2011 for filling in an emergent plant community.
- (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:** The Respondent had complete control over the project. The Respondent received 2 permits from the DEM that did not authorize the work alleged in this NOV, was aware of the LOD, 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u><b>X</b></u> <b>MINOR</b>
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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
	<b>MINOR</b>	\$1,000 to \$2,500 <b>\$2,500</b>	\$500 to \$1,000	\$100 to \$500

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to install erosion and sediment controls  
 VIOLATION NO.: C (3)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent failed to install temporary erosion and sediment controls in accordance with the permit. The extent of noncompliance was determined to be of importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> The erosion controls were necessary to protect the remaining wetland from unauthorized alterations and to demarcate the limit of disturbance on the property.</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> Full duration unknown. The DEM first documented the violation on 13 January 2014.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to install the erosion and sediment controls in accordance with the permit. The Respondent failed to take reasonable and appropriate steps to protect the wetland.
- (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:** The Respondent's president, Michael Baird, or one of the companies under his control have an extensive history of failing to comply with Rhode Island's Freshwater Wetlands Acts and the DEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*. The DEM issued informal notices to Mr. Baird or one of his companies on 9 October 1997, 10 March 2004, 23 September 2004, 16 March 2006, 23 July 2008, 16 September 2009, and 25 March 2011 for freshwater wetlands violations at various sites owned and/or operated by Mr. Baird or one of his companies. The DEM issued a formal notice of violation to one of Mr. Baird's companies on 5 May 2011 for filling in an emergent plant community.
- (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:** The Respondent had complete control over the project and were aware of the requirements in the permit.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		<b>TYPE I</b>	<b>TYPE II</b>	<b>TYPE III</b>
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	<b>MODERATE</b>	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	<b>MINOR</b>	\$1,000 to \$2,500 <b>\$1,000</b>	\$500 to \$1,000	\$100 to \$500

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to post a sign

VIOLATION NO.: C (3)

<b>TYPE</b>		
<p><u>      </u> <b>TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>  <b>X</b>  </u> <b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent failed to erect or post a sign in a conspicuous location on the property identifying the permit.</p> <p>(B) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> Full duration unknown. The DEM first documented the violation on 13 January 2014.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to post a sign on the property in accordance with the permit. The Respondent failed to take reasonable and appropriate steps to comply with the permit.
- (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:** The Respondent's president, Michael Baird, or one of the companies under his control have an extensive history of failing to comply with Rhode Island's Freshwater Wetlands Acts and the DEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*. The DEM issued informal notices to Mr. Baird or one of his companies on 9 October 1997, 10 March 2004, 23 September 2004, 16 March 2006, 23 July 2008, 16 September 2009, and 25 March 2011 for freshwater wetlands violations at various sites owned and/or operated by Mr. Baird or one of his companies. The DEM issued a formal notice of violation to one of Mr. Baird's companies on 5 May 2011 for filling in an emergent plant community.
- (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:** The Respondent had complete control over the project and was aware of the requirement to post a sign.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	<b>MODERATE</b>	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	<b>MINOR</b>	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500 <b>\$300</b>

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to provide copy of recorded permit  
 VIOLATION NO.: C (3)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent failed to provide a copy of the recorded permit to the DEM. The extent of noncompliance was determined to be of importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> Considered, but not utilized for this calculation.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent obtained permits from the DEM on 5 July 2013 and 5 September 2013. Despite the requirement set forth in the permits, the Respondent failed to provide a copy of the recorded permits to the DEM.
- (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:** The Respondent's president, Michael Baird, or one of the companies under his control have an extensive history of failing to comply with Rhode Island's Freshwater Wetlands Acts and the DEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*. The DEM issued informal notices to Mr. Baird or one of his companies on 9 October 1997, 10 March 2004, 23 September 2004, 16 March 2006, 23 July 2008, 16 September 2009, and 25 March 2011 for freshwater wetlands violations at various sites owned and/or operated by Mr. Baird or one of his companies. The DEM issued a formal notice of violation to one of Mr. Baird's companies on 5 May 2011 for filling in an emergent plant community.
- (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:** The Respondent had complete control over the project and was aware of the requirement to provide a copy of the recorded permit to the DEM.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u><b>X</b></u> <b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	<b>MODERATE</b>	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	<b>MINOR</b>	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500 <b>\$200</b>



**PENALTY MATRIX WORKSHEET**

CITATION: Failure to notify DEM prior to commencement of work  
 VIOLATION NO.: C (3)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent failed to provide notification to the DEM (written or verbal) prior to commencement of the work. The extent of noncompliance was determined to be of importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> Full duration unknown. The DEM first documented the work was underway on 13 January 2014.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent obtained permits on 5 July 2013 and 5 September 2013. Despite the requirement set forth in the permits, the Respondent failed to notify the DEM when work was going to commence.
- (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:** The Respondent's president, Michael Baird, or one of the companies under his control have an extensive history of failing to comply with Rhode Island's Freshwater Wetlands Acts and the DEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*. The DEM issued informal notices to Mr. Baird or one of his companies on 9 October 1997, 10 March 2004, 23 September 2004, 16 March 2006, 23 July 2008, 16 September 2009, and 25 March 2011 for freshwater wetlands violations at various sites owned and/or operated by Mr. Baird or one of his companies. The DEM issued a formal notice of violation to one of Mr. Baird's companies on 5 May 2011 for filling in an emergent plant community.
- (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:** The Respondent had complete control over the project, was aware of the requirement to notify the DEM, and had an obligation to comply with the permits.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u><b>X</b></u> <b>MINOR</b>
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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
	<b>MINOR</b>	\$1,000 to \$2,500	\$500 to \$1,000 <b>\$700</b>	\$100 to \$500

**PENALTY MATRIX WORKSHEET**

CITATION: Disposal of solid waste at other than a licensed solid waste management facility  
 VIOLATION NO.: C (4)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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 Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent disposed of or allowed for the disposal of 681 cubic yards of solid waste on the property. Prohibiting the disposal of solid waste at other than a licensed solid waste management facility is of importance to the regulatory program. It's the DEM's mission to ensure the proper management of solid waste to protect public health, safety and the environment.
- (B) **Environmental conditions:** The property is located in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The property is located within 200 feet of the Pawtuxet River and entirely within the Flat River Reservoir Watershed. Residential properties are located within 50 feet of the property.
- (C) **Amount of the pollutant:** 681 cubic yards of solid waste on the property as of 5 December 2013 inspection.
- (D) **Toxicity or nature of the pollutant:** Construction and demolition debris may contain hazardous chemicals, such as lead and arsenic, volatile organic compounds and carcinogens. Decomposing leaves and grass clippings generate objectionable odors that could impact nearby residential properties. The solid waste is combustible and presents a fire hazard. The stockpiles of solid waste may provide harborage to rodents or disease vectors.
- (E) **Duration of the violation:** Full duration unknown. The DEM first observed solid waste on the property on 5 December 2013.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to prevent the non-compliance by disposing of the solid waste at a licensed solid waste management facility.
- (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:** The Respondent's president, Michael Baird, and one of the companies under his control was previously sent an informal written notice on 3 February 2010 for violations of Rhode Island's solid waste statute at 3 separate properties. The violation pertained to operating a solid waste management facility and for disposal of solid waste at other than a licensed solid waste management facility. Activities at the properties included the co-mingling of tree waste and construction and demolition debris, and the shredding of the solid waste, and the composting of leaf and yard waste.
- (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:** Negligence is attributable to the Respondent for the failure to dispose of solid waste at a licensed solid waste management facility and comply with the requirements set forth in Rhode Island's Refuse Disposal Act. The Respondent, as owner of the property and the operator of the facility, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The composting of leaf and yard waste requires a license or registration from the DEM; however, the acceptance and co-mingling of C&D is strictly prohibited at any location other than a licensed solid waste management facility.

<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

**PENALTY MATRIX WORKSHEET**

CITATION: Operating a solid waste management facility, composting facility or C&D facility without a license or registration from DEM  
 VIOLATION NO.: C(5) to C(8)

<b>TYPE</b>		
<p><u>  X  </u> <b>TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent operated a solid waste management facility, C&amp;D facility and/or composting facility without the prior approval of the DEM. The Respondent neither applied for nor obtained a license or registration from the DEM to operate a solid waste management facility, C&amp;D facility or composting facility on the property. The permitting of solid waste management facilities, C&amp;D facilities and composting facilities is of vital importance to the regulatory program. Operating a solid waste management, C&amp;D facility or composting facility without the approval of the DEM bypasses all of the safeguards and environmental protections obtained through the permitting process.</p> <p>(B) <b>Environmental conditions:</b> The property is located in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The property is located within 200 feet of the Pawtuxet River and entirely within the Flat River Reservoir Watershed. Residential properties are located within 50 feet of the property.</p> <p>(C) <b>Amount of the pollutant:</b> 681 cubic yards of solid waste on the property as of 5 December 2013 inspection.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Construction and demolition debris may contain hazardous chemicals, such as lead and arsenic, volatile organic compounds and carcinogens. Decomposing leaves and grass clippings generate objectionable odors that could impact nearby residential properties. The solid waste is combustible and presents a fire hazard. The stockpiles of solid waste may provide harborage to rodents or disease vectors.</p> <p>(E) <b>Duration of the violation:</b> Full duration unknown. The DEM first observed solid waste on the property on 5 December 2013.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by first obtaining an approval or license from the DEM to operate a solid waste management facility, C&D facility and/or composting facility on the property.
- (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:** The Respondent's president, Michael Baird, and one of the companies under his control was previously sent an informal written notice on 3 February 2010 for 3 separate properties for violations of Rhode Island's solid waste statute. The violation pertained to operating a solid waste management facility and for disposal of solid waste at other than a licensed solid waste management facility. Activities at the properties included the co-mingling of tree waste and construction and demolition debris, and the shredding of the solid waste, and the composting of leaf and yard waste.
- (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:** Negligence is attributable to the Respondent for the failure to obtain a license for operating a solid waste management facility, composting facility and/or C&D facility and complying with the requirements set forth in Rhode Island's Refuse Disposal Act and the DEM's Solid Waste Regulations. The Respondent, as owner of the property and the operator of the facility, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The composting of leaf and yard waste requires a license or registration from the DEM; however, the acceptance and co-mingling of construction and demolition debris is strictly prohibited at any location other than a licensed solid waste management facility.

<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