

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

IN RE: Brian A. Pate

FILE NO.: OCI-FW-14-39

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 DEM’s jurisdiction.

B. Administrative History

On 18 August 2014, the DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the violations. On 23 September 2014, the NIE was picked up by Anthony Ricci (“Ricci”), who identified himself as an associate of Respondent. On 30 September 2014, DEM agents met with Respondent and Ricci at the property to discuss the NIE. Respondent stated that he would comply with the NIE. On 2 June 2015, the DEM issued a letter to Respondent for his failure to comply with the NIE. On 20 August 2015, a DEM agent met with Respondent at the property to inspect the work that was completed and discuss what work remained to be done to comply with the NIE. Respondent stated that he intended to comply. On 13 December 2016, the DEM attempted to inspect the Property and spoke with a woman who identified herself as Respondent’s wife. She stated that the DEM could not inspect the Property without Respondent present. The DEM agents could observe from the driveway some of the altered wetlands that are the subject of the NOV, which did not appear to be restored. As of the date of the NOV, Respondent has failed to comply with the NIE.

C. Facts

- (1) The property is located at 803 Farnum Pike, approximately 400 feet southwest of Farnum Pike (Route 7), Assessor's Plat 19, Lot 74, in North Smithfield (the “Property”).
- (2) Respondent owns the Property. Respondent acquired the Property on 30 April 2003.

- (3) On 4 April 2014 and 30 September 2014, the DEM inspected the Property. The inspections revealed the following:
- (a) Eliminating portions of an Intermittent Stream, by filling (in the form of at least soil material) and grading within the existing watercourse, and diverting its flow. This activity resulted in the alteration of approximately 250 linear feet of freshwater wetland.
 - (b) Clearing, grubbing, excavating, filling (in the form of at least sand, gravel, boulders and other soil material) and grading within several overlapping Riverbank Wetlands. This activity resulted in the alteration of approximately 73,700 square feet (1.7 acres) of freshwater wetland.
 - (c) Excavating, grubbing, filling (in the form of at least soil material and boulders) and grading within a Forest Wetland, portions of which are also Riverbank Wetland. This activity resulted in the alteration of approximately 7,300 square feet of freshwater wetland.
 - (d) Clearing, grubbing, filling (in the form of at least soil material, boulders, and woody debris), grading and installing 2 structures within Riverbank Wetland. This activity resulted in the alteration of approximately 9,300 square feet of freshwater wetland.
 - (e) Filling (in the form of at least soil material) and installing a culvert within a River to create an unauthorized crossing. This activity resulted in the alteration of approximately 20 linear feet of freshwater wetland.
- (4) Review of aerial photographs of the Property from 1985 through 2011 by the DEM revealed that some of the alterations described in Paragraph 3 above began to occur in 2003.
- (5) Respondent did not receive approval from the DEM to alter freshwater wetlands on the Property in the areas specified above.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **R.I. Gen. Laws Section 2-1-21** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (2) **DEM’s Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (the “Freshwater Wetland Regulations”), April 1998, Rule 7.01 (for alterations prior to 1 June 2007)** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.

- (3) **DEM's Freshwater Wetland Regulations**"), **June 2007, Rule 5.01 (for alterations after 1 June 2007)** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.

E. Order

Based upon the violations alleged above, the following actions are required for you to comply with the above-referenced statutes or regulations:

- (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.

RESTORATION REQUIREMENTS

- (a) Prior to the commencement of restoration, install a continuous uninterrupted line of biodegradable fiber logs along the edge of the unauthorized fill 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 freshwater wetlands.
- (b) Remove the unauthorized fill material (in the form of at least sand, gravel, boulders and other soil material) from the Forested Wetland and Riverbank Wetlands located southwest of the unauthorized River crossing. All fill material that is removed must be deposited in an appropriate upland location, outside of all wetlands.
- (c) Remove the 2 unauthorized structures and any equipment from the Riverbank Wetland located on the northeast side of the unauthorized River crossing. All fill material that is removed must be deposited in an appropriate upland location, outside of all wetlands.
- (d) Re-establish the filled-in/eliminated Intermittent Stream channel in its original location. The channel must be constructed at the proper grades, to allow the re-established Stream to flow freely and feed into the original Stream channel that is situated north of the disturbed area. Base grades and slopes for the channel must be properly prepared to allow for the application of 6 inches (minimum) of high-organic plantable soil. The channel bottom must then be seeded with a proper wetland seed mixture and side slopes with a wildlife conservation seed mixture. Flows may not be introduced

into the re-created Stream channel until such time that a dense herbaceous growth (ground cover) has become established on the channel bottom and side slopes.

- (e) Remove the unauthorized culvert and associated fill material from the River. Following completion of the removal work gradual stable slopes must be established which match the adjacent undisturbed riverbanks. Prior to any restoration work within the River, appropriate log-and-hay check-dams must be installed within the affected channel immediately downstream of the required restoration work zone. Downstream of the log-and-hay check-dams, haybale check-dams must be installed for an adequate distance and at appropriate intervals to ensure the prevention of any further adverse impacts to downstream wetland resources.

- (f) Plant all surface areas within the altered Riverbank Wetlands with trees and shrubs, as follows:

- (i) Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 20 feet on center, 4 feet tall after planting. Tree species must include an equal distribution of at least 2 of the following selections:

White pine, *Pinus strobus*
Northern white cedar, *Thuja occidentalis*
Red maple, *Acer rubrum*
Silver maple, *Acer saccharinum*
Black gum, *Nyssa sylvatica*
Box elder (Ash-leaf maple), *Acer negundo*
White oak, *Quercus alba*
American mountain ash, *Sorbus americana*
Sycamore, *Platanus occidentalis*

- (ii) Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, 10 feet on center, 3 feet tall after planting. Shrub species must include an equal distribution of at least 4 of the following selections:

Mountain laurel, *Kalmia latifolia*
Gray dogwood, *Cornus foemina racemosa*
Arrowwood, *Viburnum dentatum*
Wild raisin, *Viburnum cassinoides*
Maple leaf viburnum, *Viburnum acerifolium*
Winterberry, *Ilex verticillata*
Inkberry, *Ilex glabra*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Swamp azalea, *Rhododendron viscosum*

Purple osier (basket) willow, *Salix purpurea*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

- (g) If any of the required plantings fail to survive at least 1 full year from the time the plantings have been verified by the DEM, the same plant species shall be replanted and maintained until such time that survival occurs over 1 full year.
 - (h) All disturbed surfaces within the restored Forested Wetland must be seeded with a wetland wildlife conservation grass seed mixture, and stabilized with a mat of loose hay mulch. All disturbed surfaces within Riverbank Wetlands must be covered with plantable soil/loam (if necessary), seeded with a wildlife conservation grass seed mixture, and stabilized with a mat of loose hay mulch.
 - (i) All restored wetland areas, including replanted areas, shall 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, unless the activity is exempt as defined in the DEM's Freshwater Wetland Regulations.
 - (j) Upon stabilization of all disturbed areas, erosion and sedimentation controls must be removed from the freshwater wetland. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area, outside of all freshwater wetlands.
 - (k) The above restoration work shall be completed prior to **30 April 2018**.
- (3) Contact Ms. Shawna Smith at the DEM's Office of Compliance and Inspection at (401) 222-4700 ext. 7427 prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No work shall commence until such time that you have met in the field with a DEM agent.

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:

\$25,000

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondent in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
 - (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND 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 Part 1.7(B) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

- (2) A copy of each request for hearing must also be forwarded to:

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

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner 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) An original signed copy of the NOV is being forwarded to North Smithfield wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 2-1-24, as amended.
- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Tricia Quest at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Ms. Shawna Smith or Mr. Stephen Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-4700 extensions 7427 and 7406, respectively.

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

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Brian A. Pate
803 Farnum Pike
North Smithfield, RI 02896

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: OCI-FW-14-39

Respondent: Brian A. Pate

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 (2) and D (3) – Alteration of a Stream Fact C(3)(a)	Type I (\$5,000 Max. Penalty) *	Major	\$5,000	1 violation	\$5,000
D (1), D (2) and D (3) – Alteration of Riverbank Wetlands Fact C(3)(b)	Type I (\$5,000 Max. Penalty) *	Major	\$5,000	1 violation	\$5,000
D (1), D (2) and D (3) – Alteration of a Forested Wetland and Riverbank Wetland Fact C(3)(c)	Type I (\$5,000 Max. Penalty) *	Major	\$5,000	1 violation	\$5,000
D (1), D (2) and D (3) – Alteration of Riverbank Wetlands Fact C(3)(d)	Type I (\$5,000 Max. Penalty) *	Major	\$5,000	1 violation	\$5,000
D (1), D (2) and D (3) – Alteration of a River Fact C(3)(e)	Type I (\$5,000 Max. Penalty) *	Major	\$5,000	1 violation	\$5,000
<i>SUB-TOTAL</i>					\$25,000

*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 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 = \$25,000

PENALTY MATRIX WORKSHEET

CITATION: Alteration of a Stream - Fact C(3)(a)

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

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD <small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent altered freshwater wetlands by at least eliminating portions of an Intermittent Stream, by filling (in the form of at least soil material) and grading within the existing watercourse, and diverting its flow. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Stream was undisturbed prior to the alteration.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 3½ years. The DEM first documented the violation on 4 April 2014.</p> <p>(F) Areal extent of the violation: Approximately 250 linear 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:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. Respondent has failed to take any steps to mitigate the noncompliance, despite receiving written notices from the DEM on 18 August 2014 and 2 June 2015 requiring that he do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project and had an obligation to protect the wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000 \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250

PENALTY MATRIX WORKSHEET

CITATION: Alteration of Riverbank Wetlands- Fact C(3)(b)
 VIOLATION NO.: D (1), D (2), and D (3)

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD <small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u> Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent altered freshwater wetlands by clearing, grubbing, excavating, filling (in the form of at least sand, gravel, boulders and other soil material) and grading within several overlapping Riverbank Wetlands. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Riverbank Wetlands were undisturbed forest prior to the alteration.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 3½ years. The DEM first documented the violation on 4 April 2014.</p> <p>(F) Areal extent of the violation: Approximately 73,700 square feet (1.7 acres).</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:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. Respondent has failed to take any steps to mitigate the noncompliance, despite receiving written notices from the DEM on 18 August 2014 and 2 June 2015 requiring that he do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project and had an obligation to protect the wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000 \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250

PENALTY MATRIX WORKSHEET

CITATION: Alteration of a Forested Wetland and Riverbank Wetland - Fact C(3)(c)
 VIOLATION NO.: D (1), D (2) and D (3)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent altered freshwater wetlands by at least excavating, grubbing, filling (in the form of at least soil material and boulders) and grading within a Forest Wetland, portions of which are also Riverbank Wetland. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Forested Wetland was partly cleared prior to Respondent acquiring the Property. The remaining wetlands were undisturbed forest prior to the alterations.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 3½ years. The DEM first documented the violation on 4 April 2014.</p> <p>(F) Areal extent of the violation: Approximately 7,300 square feet.</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 take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. Respondent has failed to take any steps to mitigate the noncompliance, despite receiving written notices from the DEM on 18 August 2014 and 2 June 2015 requiring that he do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project and had an obligation to protect the wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000 \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250

PENALTY MATRIX WORKSHEET

CITATION: Alteration of Riverbank Wetlands- Fact C(3)(d)
 VIOLATION NO.: D (1), D (2) and D (3)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent altered freshwater wetlands by clearing, grubbing, filling (in the form of at least soil material, boulders, and woody debris), grading and installing 2 structures within Riverbank Wetland. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Riverbank Wetland was undisturbed prior to the alteration.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 3½ years. The DEM first documented the violation on 4 April 2014.</p> <p>(F) Areal extent of the violation: Approximately 9,300 square feet.</p> <p style="text-align: right; margin-top: 20px;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. Respondent has failed to take any steps to mitigate the noncompliance, despite receiving written notices from the DEM on 18 August 2014 and 2 June 2015 requiring that he do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project and had an obligation to protect the wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 5000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000 \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250

PENALTY MATRIX WORKSHEET

CITATION: Alteration of a River - Fact C(3)(e)

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

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent altered freshwater wetlands by at least filling (in the form of at least soil material) and installing a culvert within a River to create an unauthorized crossing. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The River was undisturbed prior to the alteration.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 3½ years. The DEM first documented the violation on 4 April 2014.</p> <p>(F) Areal extent of the violation: Approximately 20 linear feet.</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 take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. Respondent has failed to take any steps to mitigate the noncompliance, despite receiving written notices from the DEM on 18 August 2014 and 2 June 2015 requiring that he do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project and had an obligation to protect the wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000 \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250