

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Ridge Property, LLC

FILE NOS.: OCI-WP-18-135

X-ref.: RIR101491 and STW 16-195

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. Administrative History

The DEM issued a stormwater discharge permit to Respondent relating to construction of residential structures and associated infrastructure at the property that is the subject of this Notice of Violation (“NOV”). In October 2018, the DEM inspected the property and documented permit violations that resulted in the issuance of an *Expedited Citation Notice* (“ECN”) to Respondent on December 19, 2018. The ECN included a requirement to correct the violations and pay a \$5,000 penalty. Respondent paid the penalty in full. The DEM inspected the property in March 2019 and documented the same type of permit violations that led to the issuance of the ECN, which is the basis of the NOV. The DEM inspector spoke with several workers present at the time of the March 2019 inspection and informed them of the violations and asked that the project manager contact the DEM. As of the date of the NOV, the DEM has received no communication from Respondent.

C. Facts

- (1) The subject property is located at Dillon Lane, further identified as Assessor’s Plat 42, Lots 227, 228 and 229, in the Town of Smithfield, Rhode Island (the “Property”).
- (2) Respondent owns the Property.
- (3) On January 6, 2017, the DEM issued a permit to Respondent for the construction of 9 residential structures at the Property along with associated roadway and site improvements (the “Permit”).

- (4) The Permit requires Respondent to:
 - (a) install soil erosion and sedimentation controls (“SESCs”) in accordance with the General Permit for Stormwater Discharge Associated with Construction Activity effective September 26, 2016 (the “CGP”), a document titled *Soil Erosion and Sediment Control Plan for Dean Estates Condominiums, Dillon Lane, Smithfield, Rhode Island 02895, AP 42, Lots 127, 128, and 129* (the “SESC Plan”) and plans titled *Dean Estates Affordable Housing, Dillon Lane, Smithfield, Rhode Island AP 42, Lots 227, 228 & 229* prepared by Joe Casali Engineering, Inc. (the “Approved Plans”); and
 - (b) regularly conduct SESC inspections, maintain and repair all SESC as necessary to remain in effective operating condition.
- (5) On September 26, 2018, the DEM reissued the CGP.
- (6) On October 16, 2018 and March 29, 2019, the DEM inspected the Property. The inspections revealed that Respondent failed to properly install and maintain SESC as evidenced by:
 - (a) visual observation and photographs of the western side of the Property that show fill and boulders beyond the approved limit of disturbance without any of the required SESC;
 - (b) visual observation and photographs that shows an unstabilized detention pond #1 without SESC;
 - (c) visual observation and photographs that show improperly maintained SESC on the western side of the Property near detention pond #1; and
 - (d) visual observation and a photograph taken on March 29, 2019 that shows sediment laden water that had discharged from detention pond #1 to the adjacent neighboring property.
- (7) As of the date of the NOV, upon information and belief, Respondent has failed to correct the noncompliance described in subsection C(6) 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 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) **Rhode Island Code of Regulations titled *Water Quality Regulations (250-RICR-150-05-1)* (the “Water Quality Regulations”) Part 1.13(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of an approval issued by the DEM.

- (3) **Rhode Island Code of Regulations titled *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1)*(the “RIPDES Regulations”)**
- (a) **Part 1.14(B)(1)** – requiring the permittee to comply with all conditions of the permit.
 - (b) **Part 1.14(E)** – requiring the permittee to take all reasonable steps to minimize or prevent any discharge in violation of the permit.
 - (c) **Part 1.14(F)** – requiring the permittee to at all times maintain in good working order and operate as efficiently as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Within 5 days of receipt of the NOV**, properly install all SESC's in accordance with the SESC Plan, the Approved Plans and the Permit.
- (2) **At all times**, maintain and repair as necessary all SESC's at the Property.

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:

\$12,500

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the “General Treasury - Water & Air Protection Program Account” and shall be forwarded to the DEM 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.

- (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 the NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before 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
235 Promenade Street, Room 350
Providence, RI 02908-5767

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

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

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

- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Christina Hoefsmit of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy of the DEM's Office of Compliance and Inspection at (401) 222-1360 extension 7400.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR:

By: _____
David E. Chopy, Administrator
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Ridge Property, LLC
C/o Alfred G. Thibodeau, Esq.
Registered Agent for Service
1420 Mendon Road
Cumberland, RI 02864

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File No.: OCI-WP-18-135
 Respondent: Ridge Property, LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D(1) – D(3) Failure to install and maintain SESCOs in accordance with the Permit	Type I (\$25,000 Max. Penalty)*	Moderate	\$12,500	1 violation	\$12,500
SUB-TOTAL					\$12,500

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE

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

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

A review of the record in this matter has revealed that 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 cannot be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$12,500

PENALTY MATRIX WORKSHEET

CITATION: Failure to install and maintain SESC's in accordance with the Permit
 VIOLATION NO.: D(1) – 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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to properly install and maintain SESC's to prevent water pollution as required by the Permit. Compliance with the requirements of the Permit is very important to the regulatory program. Preventing water pollution is a primary goal of the regulatory program. (2) Environmental conditions: The Property is an active residential construction site located in the Woonasquatucket - Moshassuck Rivers Watershed. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration is unknown – at least approximately 6 months. The DEM inspected the Property on October 16, 2018 and March 29, 2019. Some of the same areas of the Property had no SESC's at the time of each inspection. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. The SESC's were not properly installed and maintained throughout the Property as required by the Permit. The noncompliance observed on March 29, 2019 is the same noncompliance that was observed during an inspection by the DEM on October 16, 2018, which led to the issuance of the ECN. The DEM inspection on March 29, 2019 documented that some SESC's were installed in areas of the Property that were the subject of the ECN (though not properly maintained); however, no SESC's were installed in other areas of the Property that were the subject of the ECN. The DEM has no knowledge of what steps, if any, Respondent has taken to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Respondent previously failed to comply with the Water Quality Regulations, RIPDES Regulations and the Permit as documented in the ECN.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondent for failure to comply with Water Quality Regulations, RIPDES Regulations and the Permit. Respondent has full control over the site and the occurrence of the violations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The DEM previously assessed an administrative penalty of \$5,000 for the noncompliance observed during the October 16, 2018 inspection. Respondent paid the penalty in full. This penalty is solely for the noncompliance that the DEM documented during the March 29, 2019 inspection.

MAJOR	<u> X </u> 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	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$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