

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: RI Building Corp.
Foster Excavation, Inc.**

**FILE Nos.: OCI-WP-19-178, RIR101877
STW19-056 and FWW19-0071**

NOTICE OF VIOLATION

A. Introduction

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

B. Administrative History

DEM issued a stormwater discharge permit to RI Building Corp. (“RIBC”) to construct a residential subdivision and associated infrastructure at the property that is the subject of this Notice of Violation (“NOV”). On January 6, 2020, DEM issued an *Expedited Citation Notice* (“ECN”) to RIBC by certified mail for the violations that are the subject of the NOV. On January 10, 2020, the ECN was delivered. RIBC did not respond to or comply with the ECN, which included an assessment of a penalty. On July 10, 2020, DEM inspected the property and documented the same violations that led to the issuance of the ECN.

C. Facts

- (1) The subject property is located off Plain Meeting House Road, Assessor’s Plat 33, Lot 1-1 in the Town of West Greenwich, Rhode Island (the "Property").
- (2) On March 5, 2019, RIBC, a domestic profit corporation organized pursuant to the laws of the State of Rhode Island, applied to DEM for a general permit to construct a residential subdivision and associated roadway and stormwater treatment structures at the Property.
- (3) On September 6, 2019, DEM issued a *General Permit for Stormwater Discharge Associated with Construction Activity*, No. RIR101877 (the “Permit”) to RIBC to construct a residential subdivision with associated roadway and stormwater treatment structures at the Property (the “Project”).
- (4) Foster Excavation, Inc. (“Foster Excavation”), a domestic profit corporation organized pursuant to the laws of the State of Rhode Island, was contracted by RIBC to construct the Project.

- (5) The Permit requires Respondents to:
 - (a) install soil erosion and sediment controls (“SESCs”) in accordance with the Permit and plans approved with the Permit (the “Approved Plans”); and
 - (b) regularly conduct inspections, maintain and repair all SESC as necessary to minimize soil erosion and sedimentation.
- (6) On December 9, 2019, DEM inspected the Property. The inspection revealed that Respondents failed to:
 - (a) install SESC in accordance with the Permit and the Approved Plans. A limited amount of silt fencing had been installed along the southern side of the main access road, however, the SESC were not installed continuously as depicted by the Approved Plans; and
 - (b) maintain and repair all SESC as necessary to minimize soil erosion and sedimentation. The SESC that had been installed were not being maintained, allowing sediment laden water to escape.
- (7) On July 10, 2020, DEM inspected the Property. The inspection revealed that Respondents failed to:
 - (a) install all SESC at the Property in accordance with the Approved Plans. Straw waddles were scattered and discontinuous throughout the Property; and
 - (b) maintain and repair all SESC as required by the Permit. Sections of straw waddles were damaged in certain areas throughout the Property, particularly in the areas identified as Compound Lot 1 and Compound Lot 3 on the Approved Plans.

D. Violation

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

- (1) **R.I. Gen. Laws Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) ***Water Quality Regulations (250-RICR-150-05-1) [effective 19 August 2018 to Current] (the “Water Quality Regulations”)***
 - (a) **Part 1.13(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of an approval issued by DEM.
 - (b) **Part 1.18(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.

- (3) ***Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1) [effective 7 October 2018 to Current] (the “RIPDES Regulations”)***
- (a) **Part 1.14(B)(1)** – requiring the permittee to comply with all conditions of the permit.
 - (b) **Part 1.14(E)** – requiring the permittee to take all reasonable steps to minimize or prevent any discharge in violation of the permit.
 - (c) **Part 1.14(F)** – requiring the permittee to at all times maintain in good working order and operate as efficiently as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit.

E. Order

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

- (1) **IMMEDIATELY** install, repair, replace, supplement, or modify all SESC's at the Property as necessary to bring the site into full compliance with the Permit and Approved Plans.
- (2) **At all times** inspect, maintain, and repair as necessary, all SESC's at the Property in full compliance with the Permit and Approved Plans for the duration of the construction project and until the Permit is terminated.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$10,000

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check, or money order made payable to the "General Treasury - Water & Air Protection Program" and shall be forwarded to DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.

- (3) Penalties assessed against Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

G. Right to Administrative Hearing

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

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

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

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

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

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated

administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).

- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Joseph J. LoBianco of DEM's Office of Legal Services at (401) 222-6607 or at joseph.lobianco@dem.ri.gov. All other inquiries should be directed to Patrick Hogan of DEM's Office of Compliance and Inspection at (401) 222-1360 extension 7119 or at patrick.hogan@dem.ri.gov.

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

FOR THE DIRECTOR:

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

Dated: _____

CERTIFICATION

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

RI Building Corp.
c/o Paul Demarco, Resident Agent for Service
620 Main Street, CU 3A
East Greenwich, RI 02818

Foster Excavation Inc.
c/o Alfred A. Russo, Jr. Esq., Registered Agent for Service
Shechtman Halperin Savage LLP
1080 Main Street
Pawtucket, RI 02860

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File No.: OCI-WP-19-178, RIR101877, STW19-056 and FWW19-0071
 Respondents: RI Building Corp. and Foster Excavation Inc.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1), D (2), D (3)(a) and D (3)(b) – Failure to install SESC's in accordance with the Approved Plans	Type I (\$25,000 Max. Penalty) *	Minor	\$2,500	2 violations	\$5,000
D (1), D (2) and D (3) – Failure to maintain and repair SESC's in accordance with the Permit	Type I (\$25,000 Max. Penalty) *	Minor	\$2,500	2 violations	\$5,000
SUB-TOTAL					\$10,000

*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 Respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

COST RECOVERY

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

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$10,000

PENALTY MATRIX WORKSHEET

CITATION: Failure to install SESCOs in accordance with the Approved Plans

VIOLATION NOs.: D (1), D (2), D (3)(a) and D (3)(b)

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

DEVIATION FROM THE STANDARD
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to fully install SESCOs in accordance with the Approved Plans. Installation of SESCOs to prevent water pollution is important to the regulatory program. Preventing water pollution is the primary goal of the regulatory program.
- (2) **Environmental conditions:** The Property is an active residential condominium construction site with greater than 5 acres of land disturbance located in the watershed of an unnamed tributary to Acid Factory Brook.
- (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:** Unknown – at least 2 days. DEM observed the violations during inspections conducted at the Property on December 9, 2019 and July 10, 2020.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the noncompliance. The SESC's were not installed in accordance with the Approved Plans. DEM has no knowledge if Respondents have mitigated 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:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for failure to comply with the Water Quality Regulations, the RIPDES Regulations and the Permit. Respondents have full control over the site and the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

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

VIOLATION NOs.: 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>TYPE II</u> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>TYPE III</u> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to properly maintain and repair SESC's to prevent water pollution as required by the Permit. Compliance with the requirements of the Permit is important to the regulatory program. Preventing water pollution is the primary goal of the regulatory program.
- (2) **Environmental conditions:** The Property is an active residential condominium construction site with greater than 5 acres of land disturbance located in the watershed of an unnamed tributary to Acid Factory Brook.
- (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 unknown – at least 2 days. DEM observed the violation during inspections conducted at the Property on December 9, 2019 and July 10, 2020.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. The SESC's were not properly being maintained and in were found to be in disrepair. DEM has no knowledge if the noncompliance was mitigated.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for failure to comply with Water Quality Regulations, RIPDES Regulations and the Permit. Respondents have full control over the site and the occurrence of the violations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250