

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

**IN RE: Jose M. Sousa
 Oriana A. Sousa**

FILE NO.: FW C08-0141

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. Facts

- (1) The property is located approximately 250 feet east of Reservoir Road, at house number 35, approximately 400 feet northeast of the intersection of Reservoir Road and Butternut Drive, Assessor's Plat 35, Lot 35 in the town of Coventry, Rhode Island (the “Property”).
- (2) At all times relevant to this Notice of Violation (“NOV”), Oriana A. Sousa owned and currently owns the Property.
- (3) DEM inspected the Property on August 15, 2007, August 8, 2008, October 30, 2008, December 14, 2012, and August 6, 2013. DEM determined that a Swamp with associated Perimeter Wetland and an Area Subject to Storm Flowage (“ASSF”) exists on the Property. All inspections showed clearing filling, grading and creating soil disturbances within freshwater wetlands on the Property.
- (4) The most recent inspection of the Property on August 6, 2013 revealed the following:
 - (a) Clearing, filling (in the form of soil material, boulders, rocks, stones, masonry materials, and other miscellaneous debris), grading, and creating soil disturbance within a Swamp. These activities have resulted in the unauthorized alteration of approximately 48,400 square feet of freshwater wetland.
 - (b) Clearing, filling (in the form of soil material, boulders, rocks, stones, masonry materials, and other miscellaneous debris), grading, and creating soil disturbance within Perimeter Wetland. These activities have resulted in the unauthorized alteration of approximately 19,125 square feet of freshwater wetland.

- (c) Filling (in the form of soil material, boulders, rocks, stones, and masonry materials, and other miscellaneous debris), grading, and creating soil disturbance within an ASSF. These activities have resulted in the unauthorized alteration of approximately 350 linear feet (1,050± square feet) of freshwater wetland.
- (5) Jose M. Sousa agreed to undertake restoration for his clearing filling, grading and creating soil disturbances within freshwater wetlands on the Property.
- (6) The Respondents did not receive approval from DEM to alter the freshwater wetlands on the Property in the areas specified above.
- (7) DEM issued a Notice of Intent to Enforce (“NIE”) to the Respondents on October 14, 2008 for the violations observed on the Property as of that date. The NIE required specific actions to correct the violations. DEM met with Jose M. Sousa on October 30, 2008 to attempt to resolve the violations.
- (8) To date, the Respondents have failed to correct the violations on the Property.

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 for Governing the Administration and Enforcement of the Freshwater Wetlands Act, Rule 5.01** – prohibiting activities which may alter freshwater wetlands without a permit 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:

- (1) **IMMEDIATELY** cease and desist from any further alteration of the above described freshwater wetlands.
- (2) **By May 1, 2014** 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 soil erosion and sediment controls (staked haybales, silt fence, or otherwise suitable substitute) between those portions of the wetlands impacted by filling and those portions of the Swamp impacted by clearing and surface disturbance activities. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the completion of the required wetland restoration, and until such time that all of the surrounding areas are properly stabilized. At the discretion and direction of the DEM, additional soil erosion and sediment controls must be installed to protect any and all freshwater wetlands.
- (b) Remove all unauthorized fill material (in the form of at least soil material, bricks, stockpiled (raw) masonry and construction materials, rocks and boulders, stored equipment, vehicles, and assorted debris) from the Swamp, Perimeter Wetland, and ASSF. This shall also include any portions of the Swamp where soil erosion has resulted in the transport and deposition of sands and sediments into adjacent wetlands that had otherwise only been cleared. In addition, the standing *Phragmites* plants and sub-surface rhizomes (along with associated soil material) must be removed within those portions of the Swamp where invasive giant reed (*Phragmites* spp.) has become established. Removal shall occur to a depth that eradicates this plant. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
- (c) The unauthorized fill material in the Swamp must be removed to an elevation that matches the adjacent undisturbed Swamp grades, to a point where original native hydric (organic) soils are encountered. Any fill material that is embedded in the original undisturbed soil substrate also must be removed from the wetlands. Following fill removal, the Swamp must be re-established and restored to the conditions that existed prior to the unauthorized alterations. If, following fill removal, an adequate organic (hydric) soil substrate is not present (i.e., if it had been previously excavated/removed), then the Swamp must be further excavated (6 inch minimum depth) and an appropriate amount of high-organic plantable soil (6 inch minimum depth) must be applied to re-establish the correct Swamp elevations and hydrologic regime, matching those of the adjacent undisturbed Swamp. All disturbed surface areas within the affected/restored Swamp must be seeded with a wetland seed mix, and then covered with a mat of spread hay mulch to provide immediate stabilization.
- (d) The unauthorized fill material in the Perimeter Wetland and ASSF must be removed to the original, pre-alteration grades. The ASSF must be restored to its original, pre-alteration condition, establishing a stable channel bottom and

side slopes. A minimum of 6 inches of plantable soil must be applied to all disturbed surface areas within the Perimeter Wetland and ASSF, and then all surfaces must be seeded with a wildlife conservation seed mix, and covered with a mat of spread hay mulch to provide immediate stabilization.

- (e) Upon completion of the fill removal, the Perimeter Wetland shall be planted with trees and shrubs as specified below:

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

White pine, *Pinus strobus*
Northern white cedar, *Thuja occidentalis*
Red maple, *Acer rubrum*
Box elder, *Acer negundo*
Black Cherry, *Prunus serotina*
White ash, *Fraxinus americana*
White oak, *Quercus alba*
Northern red oak, *Quercus rubra*
Sassafras, *Sassafras albidum*
Black birch, *Betula lenta*
American beech, *Fagus grandifolia*

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 area defined above. Shrub species must include an equal distribution of at least 5 of the following selections:

Mountain laurel, *Kalmia latifolia*
Giant rhododendron, *Rhododendron maximum* (shaded areas only)
Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*
Silky dogwood, *Cornus amomum*
Arrowwood (southern), *Viburnum dentatum*
Mapleleaf viburnum, *Viburnum acerifolium*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Inkberry (Gallberry holly), *Ilex glabra*
Sweet pepperbush, *Clethra alnifolia*
Bayberry, *Myrica pennsylvanica*
Witchhazel, *Hamamelis virginiana*

In addition, balled and burlapped or transplanted evergreen tree species must be planted in a straight line, 8 feet on center, 5 to 6 feet tall after planting, along the entire outer (landward) edge of the above-described planting area

(i.e., along the location identified by measuring 50 feet from the restored Swamp edge). The tree species to be utilized for this screening line must include at least 2 of the following selections:

Northern white cedar, *Thuja occidentalis*

White pine, *Pinus strobus*

Pitch Pine, *Pinus rigida*

Eastern hemlock, *Tsuga canadensis*

Red cedar, *Juniperus virginiana*

- (f) If any or all of the required plantings fail to survive at least 2 full growing seasons from the time they have been planted, you shall be responsible for replanting and maintaining the same plant species until such time that survival is maintained over 2 full growing seasons.
 - (g) All areas of disturbed surface soils shall be loamed (if necessary), seeded with a wetland seed mix (within restored Swamp surface areas) or a wildlife conservation grass seed mixture (within the Perimeter Wetland and the ASSF), and covered with a mat of loose hay mulch (as previously described above).
 - (h) Upon final stabilization of disturbed areas, all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) must be removed from the freshwater wetland. Staked haybales, fiber logs, 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, all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.
 - (i) 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 DEM.
- (3) Contact Mr. Bruce Ahern at (401) 222-1360 ext. 7703 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 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 against each named Respondent as follows:

Jose M. Sousa – Nine Thousand Five Hundred Dollars (\$9,500.00)

Oriana A. Sousa – Nine Thousand Five Hundred Dollars (\$9,500.00)

- (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 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's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondents 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.

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 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, 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 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:

Marisa Desautel, 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 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 2-1-24, 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) Marisa Desautel at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Mr. Bruce Ahern or Mr. Harold Ellis of the DEM Office of Compliance and Inspection at (401) 222-1360 extensions 7703 and 7401, 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 F above.

FOR THE DIRECTOR

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

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____ 2014
the within Notice of Violation was forwarded to:

Jose M. Sousa
49 Lemis Street
Coventry, RI 02816

Oriana A. Sousa
49 Lemis Street
Coventry, RI 02816

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C08-0141

Respondents: Jose M. Sousa and Oriana A. Sousa

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) and (2) – Alteration of a Swamp	Type I (\$10,000 Max. Penalty)*	Major	\$10,000	1 violation	\$10,000.00
C(1) and (2) – Alteration of Perimeter Wetland	Type I (\$10,000 Max. Penalty)*	Major	\$7,500	1 violation	\$7,500.00
C(1) and (2) – Alteration of an Area Subject to Storm Flowage	Type I (\$10,000 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500.00
SUB-TOTAL					\$19,000.00

*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 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 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 = \$19,000.00

PENALTY MATRIX WORKSHEET

CITATION: Alteration of a Swamp
 VIOLATION NO.: C (1) and (2)

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 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 Respondents altered and/or allowed alterations of freshwater wetlands by clearing, filling (in the form of soil material, boulders, rocks, stones, masonry materials, and other miscellaneous debris), grading, and creating soil disturbance within a Swamp. The severity of the alteration to the wetland environment was determined to be of major significance to the regulatory program.
- (B) **Environmental conditions:** The freshwater wetland was an undisturbed forested wetland prior to the unauthorized alteration.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** 6 years. The DEM first documented a violation on August 15, 2007.
- (F) **Areal extent of the violation:** The areal extent of the violation is approximately 48,400 square feet.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The DEM issued an informal notice to the Respondents on October 14, 2008 and met with Jose Sousa on October 30, 2008 in an attempt to resolve the noncompliance; however, to date the Respondents have failed to restore the altered wetlands. In addition, the Respondents have continued to undertake additional alterations to these same wetlands without a permit. The Respondents had prior knowledge of the area to be protected and failed to take steps to prevent the alteration. Reasonable and appropriate steps to prevent and/or mitigate the noncompliance have not been taken.
- (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 Respondents were previously required to restore freshwater wetlands on property located on Lemis Street in Coventry (C97-0146).
- (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 Respondents had complete control over the Property 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 \$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
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Alteration of Perimeter Wetland
 VIOLATION NO.: C (1) and (2)

TYPE

<p style="text-align: center;"><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
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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:** Respondents altered and/or allowed alterations of freshwater wetlands by clearing, filling (in the form of soil material, boulders, rocks, stones, masonry materials, and other miscellaneous debris), grading, and creating soil disturbance within a Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.

- (B) **Environmental conditions:** The Perimeter Wetland was predominately undisturbed forest prior to the unauthorized alteration.

- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.

- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.

- (E) **Duration of the violation:** 6 years. The DEM first documented the violation on August 15, 2007.

- (F) **Areal extent of the violation:** The areal extent of the violation is approximately 19,125 square feet.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The DEM issued an informal notice to the Respondents on October 14, 2008 and met with Jose Sousa on October 30, 2008 in an attempt to resolve the noncompliance; however, to date the Respondents have failed to restore the altered wetlands. In addition, the Respondents have continued to undertake additional alterations to these same wetlands without a permit. The Respondents had prior knowledge of the area to be protected and failed to take steps to prevent the alteration. Reasonable and appropriate steps to prevent and/or mitigate the noncompliance have not been taken.
- (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 Respondents were previously required to restore freshwater wetlands on property located on Lemis Street in Coventry (C97-0146).
- (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 Respondents had complete control over the Property 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 \$7,500	\$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 an Area Subject to Storm Flowage
 VIOLATION NO.: C (1) and (2)

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;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ 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.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM <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: Respondents altered and/or allowed alterations of freshwater wetlands by filling (in the form of soil material, boulders, rocks, stones, masonry materials, and other miscellaneous debris), grading, and creating soil disturbance within an Area Subject to Storm Flowage (ASSF). These activities have resulted in the unauthorized alteration of approximately 350 linear feet (1,050± square feet) of freshwater 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 ASSF was previously an open channel running through the property prior to the unauthorized alteration. The entire channel was eliminated by filling.</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: 6 years. The DEM first documented the violation on August 15, 2007.</p> <p>(F) Areal extent of the violation: The areal extent of the violation is approximately 350 linear feet (1,050 square feet).</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The DEM issued an informal notice to the Respondents on October 14, 2008 and met with Jose Sousa on October 30, 2008 in an attempt to resolve the noncompliance; however, to date the Respondents have failed to restore the altered wetlands. In addition, the Respondents have continued to undertake additional alterations to these same wetlands without a permit. The Respondents had prior knowledge of the area to be protected and failed to take steps to prevent the alteration. Reasonable and appropriate steps to prevent and/or mitigate the noncompliance have not been taken.
- (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 Respondents were previously required to restore freshwater wetlands on property located on Lemis Street in Coventry (C97-0146).
- (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 Respondents had complete control over the Property 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.

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