

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

**IN RE: Thomas A. St. Godard
MacKenzie St. Godard**

FILE NOs.: OCI-FW-17-109 and C99-0276

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

On 7 July 1999, 2 August 1999, 11 August 1999, 12 August 1999, and 19 August 1999, DEM received complaints involving various activities undertaken within freshwater wetlands on the property that is the subject of this Notice of Violation (“NOV”). On 23 August 1999 and 25 August 1999, in response to the complaints, DEM inspected the property. The inspections revealed freshwater wetland violations within some of the same freshwater wetlands that are the subject of the NOV. On 10 September 1999 and 21 September 1999, DEM received additional complaints involving activities undertaken within freshwater wetlands on the property. On 8 October 1999, DEM issued a Notice of Intent to Enforce (“NIE”) to Thomas St Godard (“St. Godard”) and Krista St. Godard. The NIE required specific actions to correct the violations. On 1 November 1999, in response to the NIE, DEM met at the property to discuss the NIE with Krista St. Godard and her attorney. It was agreed that DEM would return to the property to identify the location of the freshwater wetlands with flags. On 12 November 1999, DEM flagged the freshwater wetlands on the property. On 13 December 1999, DEM received an additional complaint involving activities undertaken within freshwater wetlands on the property. On 20 December 1999, DEM inspected the property and did not identify any new violations; however, none of the required actions in the NIE had commenced. On 5 January 2000, DEM received an additional complaint involving activities undertaken within freshwater wetlands. On 17 January 2000, DEM issued a letter to St. Godard and Krista St. Godard advising them that they had failed to comply with the required actions in the NIE. On 7 February 2000 and 10 March 2000, in response to the letter, DEM inspectors met St. Godard at the property, and an agreement was reached on restoration of some of the altered wetlands. DEM’s inspectors advised St. Godard that he needed permits for much of the activity he stated he wanted to perform on the property. St. Godard said he understood and that he would not undertake any further activity within freshwater wetlands without obtaining a permit. On 20 March 2000, DEM inspected the property and observed that, except for plantings, the freshwater wetlands were satisfactorily restored. On 20 March 2000, DEM’s inspector spoke with St. Godard about his observations. St. Godard stated that he wanted to wait until Spring to install the plantings.

On 1 March 2002, 18 April 2002, 5 May 2003 and 6 May 2003, DEM received additional complaints involving activities within freshwater wetlands on the property. On 21 May 2003, DEM's inspector spoke with St. Godard regarding the complaints. On 10 May 2017, DEM received a complaint involving activities within freshwater wetlands on the property. On 18 July 2017, DEM attempted to inspect the property, but no one was present. On 19 July 2017, in response to the door hanger left by DEM's inspector, St. Godard spoke with DEM's inspector and gave permission to DEM to inspect the property to investigate the complaint. On 5 October 2017, DEM inspected the property and identified the alleged freshwater wetland violations that are the subject of the NOV. The following day DEM's inspector spoke with St. Godard about the violations. St. Godard did not agree to restore the freshwater wetlands and stated that he may do more work within the freshwater wetlands. A review of 2018 and 2019 aerial photographs revealed that all the violations observed on 5 October 2017 are present as well as some new violations.

C. Facts

- (1) The property is located approximately 200 feet north of the intersection of Sneeceh Pond Road and Bonnie Brook Drive, at house number 232 Sneeceh Pond Road, Plat 42, Lot 240 in Cumberland, Rhode Island (the "Property").
- (2) Respondents own the Property. St. Godard has owned the Property since at least 8 March 1999. MacKenzie St. Godard has owned the Property since 14 January 2010.
- (3) The violations that are the subject of the NOV occurred since the Property has been owned by one or both Respondents.
- (4) On 23 August 1999, 25 August 1999, 12 November 1999, 20 December 1999, 7 February 2000, 8 March 2000, 10 March 2000, 13 March 2000, and 20 March 2000, DEM inspected the Property. The inspections revealed alterations to freshwater wetlands on the Property.
- (5) On 15 October 2017, DEM inspected the Property. The inspection and subsequent review of aerial photographs taken in 1999, 2003, 2008, 2011, 2014, 2018 and 2019 revealed the following:
 - (a) clearing, filling (in the form of at least rip rap, gravel, crushed asphalt, mulch, rocks, and soil material), grading, installing two crossings (bridges), and directing stormwater runoff into East Sneeceh Brook ("East Sneeceh Brook"). This activity has resulted in the alteration of approximately 3,000 square feet (600 linear feet) of freshwater wetland.
 - (b) clearing, filling (in the form of at least crushed asphalt, gravel, mulch, and soil material), and installing two crossings (bridges) within a Stream (the "Stream"). This activity has resulted in the alteration of approximately 200 square feet (60 linear feet) of freshwater wetland.

- (c) clearing, filling (in the form of at least soil material, gravel, concrete, crushed asphalt, mulch and bricks), grading, establishing lawn, building raised landscaping beds, constructing a rip rap wall and creating paths within Swamp (the “Swamp”). This activity has resulted in the alteration of approximately 15,000 square feet of freshwater wetland.
 - (d) clearing, filling (in the form of at least soil material, gravel, crushed asphalt and mulch), grading, establishing lawn, building raised landscaping beds, constructing various structures, paving, and storing vehicles and landscaping/construction materials within Perimeter Wetland associated with the Swamp, Riverbank Wetland associated with East Sneece Brook and the Stream and Floodplain. This activity has resulted in the alteration of approximately 45,000 square feet (approximately 1 acre) of freshwater wetland.
- (6) The activities described in subsection C (5) above are not exempt in accordance with the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (the “Wetland Regulations”) that were in effect at the time the activities occurred.
 - (7) St. Godard is solely responsible for the alterations described in subsection C (5) that occurred from his acquisition of the Property to 14 January 2010.
 - (8) Respondents are jointly responsible for the alterations described in subsection C (5) that occurred from 14 January 2010 to the date of the NOV.
 - (9) Respondents did not receive a permit from DEM to alter the freshwater wetlands on the Property in the areas described in subsection C (5) 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 DEM.
- (2) **Wetland Regulations [effective 23 April 1998 through 1 June 2007], Rule 7.01(A)** – prohibiting activities which may alter freshwater wetlands without a permit from DEM, unless the activities are exempt in accordance with Rule 6.00.
- (3) **Wetland Regulations [effective 1 June 2007 through 24 June 2009], Rule 5.01(A)** – prohibiting activities which may alter freshwater wetlands without a permit from DEM, unless the activities are exempt in accordance with Rule 6.00.

- (4) **Wetland Regulations [effective 24 June 2009 through 28 December 2010], Rule 5.01(A)** – prohibiting activities which may alter freshwater wetlands without a permit from DEM, unless the activities are exempt in accordance with Rule 6.00.
- (5) **Wetland Regulations [effective 28 December 2010 through 16 July 2014], Rule 5.01(A)** – prohibiting activities which may alter freshwater wetlands without a permit from DEM, unless the activities are exempt in accordance with Rule 6.00.
- (6) ***Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1) [effective 16 July 2014 to Current], Part 1.5(A)(1)*** – prohibiting activities which may alter freshwater wetlands without a permit from DEM, unless the activities are exempt in accordance with Part 1.6.

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** cease from any further alteration of freshwater wetlands on the Property.
- (2) **Within 30 days of receipt of the NOV**, retain a qualified environment consultant with substantial prior experience in restoration projects of this character and scope, to prepare an appropriate wetland restoration plan that addresses the proper restoration of all wetlands on the Property consistent with the restoration requirements below (the “Wetland Restoration Plan”). The plan must provide detailed descriptions of the methods by which the altered wetlands will be restored and a work sequence that will allow the restoration to be completed in a logical and timely manner.
- (3) **Within 90 days of receipt of the NOV**, submit the Wetland Restoration Plan to DEM.
- (4) The Wetland Restoration Plan shall be subject to DEM’s review and approval. Upon review, DEM shall provide written notification to you either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies in the plan, you must submit to DEM a modified proposal or additional information necessary to correct the deficiencies.

- (5) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) Prior to the commencement of restoration, properly install a continuous uninterrupted line of silt fence, compost filter socks/fiber logs, and/or staked haybales between those portions of the subject wetlands that have been altered/disturbed without authorization and any adjacent undisturbed wetland features. 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 the surrounding areas are properly stabilized. At the direction of DEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect all freshwater wetlands.
- (b) Remove all unauthorized fill material, structures, pavement, and any other unauthorized improvements from the freshwater wetlands. Fill must be removed down to original, pre-alteration grades in all locations, to match the elevations of any adjacent undisturbed wetlands. **Prior to proceeding to the next restoration step, all areas of concern where fill has been removed must first be inspected by DEM to confirm that the correct restoration grades have been achieved.** If the original wetland (organic/hydric) surface soil is not present within the Swamp following fill removal, then at the direction of DEM, the following procedure must be used:
- (i) An additional 6 inches of soil material must be excavated from the affected portions of the Swamp (below original grade) to ensure that the proper hydrology is achieved at the completion of the restoration work.
- (ii) A minimum of 6 inches of high-organic plantable soil must be applied throughout the restored portions of the Swamp to achieve the final desired wetland surface grade, which should match the elevations of any adjacent remaining undisturbed wetland.

At the direction of DEM, in lieu of entire removal of lawn areas, current lawn surfaces may be properly scarified, either manually or using small mechanical equipment (e.g., rototiller, farm tractor tiller, etc.) and then over-seeded with the proper seed mix (as described below).

- (c) All removed fill material must be taken offsite and deposited in an appropriate upland location, outside of all freshwater wetlands.

- (d) All fill removal operations within East Sneece Brook, the Stream and the Swamp must be undertaken within an acceptable “low-flow” period (typically July 1 – October 31). If necessary, coffer dams and dewatering operations must be utilized while undertaking restoration activities in East Sneece Brook and the Stream to allow restoration to take place in relatively “dry” conditions.
- (e) Following removal of the unauthorized fill material and establishment of final surface grades, all disturbed surface areas within the Swamp and immediately adjacent to East Sneece Brook and the Stream must be seeded with an appropriate wetland/floodplain seed mixture. The embankments of East Sneece Brook and the Stream, along with any other steeply sloping areas, must be covered with biodegradable erosion control matting (e.g., jute mesh, coconut fiber matting, etc.). All remaining disturbed surface areas within the Riverbank Wetlands, Perimeter Wetlands and Floodplain must be covered with a proper plantable soil (4 inches minimum), as needed, and seeded with an appropriate wildlife conservation seed mixture. A thick mat of spread straw mulch, which is free of any contaminants that could promote the spread of invasive plant species, must also be applied over all disturbed surface areas outside of those locations that are to be covered in erosion control matting. **Prior to proceeding to the next restoration step, all restoration areas must first be inspected by a DEM to confirm that all areas of concern have been properly stabilized to the satisfaction of DEM.**
- (f) Upon approval from DEM that all surfaces are adequately stabilized, plant trees and shrubs within all portions of the altered/restored Swamp, at the direction of DEM. The trees and shrubs must be obtained from nursery stock that has been raised in hydric conditions. If necessary, to improve survivability, the plants may be installed within small, raised mounds (slightly elevated only) of high-organic plantable soil material (only). Trees and shrubs must be installed as follows:

Balled and burlapped, potted, or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, 4 to 5 feet tall after planting, throughout areas defined in the field by DEM. Tree species must include an equal distribution of at least 3 of the following selections:

Red maple, *Acer rubrum*
Silver Maple, *Acer saccharinum*
Black gum, *Nyssa sylvatica*
Green ash, *Fraxinus pennsylvanica*
Swamp white oak, *Quercus bicolor*
Pin oak, *Quercus palustris*
American elm, *Ulmus americana*
Weeping willow, *Salix babylonica*
Black willow, *Salix nigra*
Yellow birch, *Betula allegheniensis*

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 4 of the following selections:

Red osier dogwood, *Cornus stolonifera*
Elderberry, *Sambucus canadensis*
Northern arrowwood, *Viburnum recognitum*
Winterberry, *Ilex verticillata*
Highbush blueberry, *Vaccinium corymbosum*
Spicebush, *Lindera benzoin*
Swamp azalea, *Rhododendron viscosum*
Speckled alder, *Alnus rugosa*
Smooth alder, *Alnus serrulata*
Red chokeberry, *Aronia arbutifolia*
Buttonbush, *Cephalanthus occidentalis*
Maleberry, *Lyonia lingustrina*

- (g) Upon approval from DEM that all surfaces are adequately stabilized, plant trees and shrubs within the altered Riverbank Wetlands, Perimeter Wetlands and Floodplain at the direction of DEM, as follows:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, 4 to 5 feet tall after planting, throughout areas defined in the field by DEM. 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*
Gray birch, *Betula populifolia*
Black birch, *Betula lenta*
American beech, *Fagus grandifolia*

Balled and burlapped, potted, 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 4 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*
American cranberrybush, *Viburnum trilobum*
Mapleleaf viburnum, *Viburnum acerifolium*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Inkberry (Gallberry holly), *Ilex glabra*
Sweet pepperbush, *Clethra alnifolia*
Bayberry, *Myrica pennsylvanica*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

(h) In addition, balled and burlapped or transplanted evergreen screening 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 restoration areas as directed by DEM. Tree species 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* (disease-resistant strain)
White spruce, *Picea glauca*

- (6) If any of the required plantings fail to survive at least 2 full growing seasons from the time they have been planted, replant and maintain the same plant species until such time that survival is maintained over 2 full growing seasons.
- (7) 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 area, or within other freshwater wetlands on the Property, without first obtaining a permit from DEM, unless the activity is exempt under the Wetland Regulations.

- (8) Upon stabilization of all disturbed areas, all non-biodegradable erosion and sedimentation controls must be removed from the freshwater wetlands. Prior to the removal of the controls and/or prior to the contractor vacating the site, all accumulated sediment must be removed to a suitable upland area, outside of all freshwater wetlands.
- (9) The above restoration work shall be completed by **30 May 2022**.

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:

\$35,000

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective 19 March 2021 to Current] (the “Penalty Regulations”) and must be paid to DEM within 30 days of your receipt of the NOV.
- (3) Penalty payments shall be by one of two methods:
 - (a) By certified check, cashier’s check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, DEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767
 - (b) By wire transfer in accordance with instructions provided by DEM.
- (4) 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).
 - (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)* [effective 27 November 2014 to Current].
- (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 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 the Town of Cumberland, Rhode Island 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 Section 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) Christina Hoefsmit of DEM's Office of Legal Services at (401) 222-6607 or at christina.hoefsmit@dem.ri.gov. All other inquiries should be directed to David E. Chopy at (401) 222-1360 ext. 2777400 or at david.chopy@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 _____ 2021
the within Notice of Violation was forwarded to:

Thomas A. St. Godard
232 Sneeck Pond Road
Cumberland, RI 02864

MacKenzie St. Godard
232 Sneeck Pond Road
Cumberland, RI 02864

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS
 File Nos.: OCI-FW-17-109 and C99-0276
 Respondents: Thomas A. St. Godard and MacKenzie St. Godard

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) through D (6) – Wetland Alterations within East Sneece Brook	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) through D (6) – Wetland Alterations within Stream	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$5,000	1 violation	\$5,000
D (1) through D (6) – Wetland Alterations within Swamp	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) through D (6) – Wetland Alterations within Perimeter Wetland, Riverbank Wetland and Floodplain	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
SUB-TOTAL					\$35,000

*Maximum Penalties represent the maximum penalty amounts 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 = \$35,000

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations within East Sneeck Brook
 VIOLATION NOs.: D (1) through D (6)

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 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 Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands on the Property by clearing, filling (in the form of at least rip rap, gravel, crushed asphalt, mulch, rocks, and soil material), grading, installing two crossings (bridges), and directing stormwater runoff into East Sneeck Brook. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: Prior to the alterations, East Sneeck Brook had naturally vegetated banks throughout the Property from where the existing bridge is located. There is also evidence that a portion of the southern bank of East Sneeck Brook immediately west of the bridge was historically walled; however, there was no wall or storm water discharge along the northern bank of East Sneeck Brook west of the existing bridge as is present today. The bank was natural with some vegetation. Ducks and signs of deer were observed. (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: Approximately 21 years. The alterations have been undertaken at various times from March 1999 through Spring 2019. (6) Areal extent of the violation: Approximately 3,000 square feet (600 linear feet). 		
(continued)		

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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. St. Godard had knowledge of the freshwater wetlands on the Property, and he had knowledge of the need for a permit from DEM prior to altering East Sneeck Brook. On 23 August 1999 and 25 August 1999, DEM inspected the Property. On October 8, 1999, DEM issued the NIE to St Godard. On 10 March 2000, DEM inspectors met St. Godard at the Property, and an agreement was reached on restoration of some of the altered wetlands. DEM’s inspectors advised St. Godard that he needed permits for much of the activity he stated he wanted to perform on the Property. St. Godard said he understood and that he would not undertake any further activity within freshwater wetlands without obtaining a permit. On 20 March 2000, DEM inspected the Property and observed that some of the agreed upon restoration was completed, but more remained to be done. St. Godard stated he would install the plantings in the Spring. Respondents have failed to take any action to mitigate the noncompliance. On 6 October 2017, DEM’s inspector spoke with St. Godard about the violations. St. Godard stated that he had no intentions of restoring the freshwater wetlands. A review of 2019 aerial photographs revealed that all the violations observed on 5 October 2017 are present as well as some new violations.
- (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:** Respondents had complete control over the violation, and the violation was foreseeable. St. Godard had knowledge that East Sneeck Brook is a freshwater wetland and knowledge of the Wetland Regulations, yet Respondents failed to apply to DEM for a permit prior to altering East Sneeck Brook.
- (10) **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: Wetland Alterations within Stream
 VIOLATION NOs.: D (1) through D (6)

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		
<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 Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands on the Property by clearing, filling (in the form of at least crushed asphalt, gravel, mulch, and soil material), and installing two crossings (bridges) within the Stream. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program. (2) Environmental conditions: Prior to the alterations, the Stream was natural, vegetated, and undisturbed. Signs of deer were observed. (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: Approximately 21 years. The alterations have been undertaken at various times from March 1999 through Spring 2019. (6) Areal extent of the violation: Approximately 200 square feet (60 linear feet). <p style="text-align: right;">(continued)</p>		

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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. St. Godard had knowledge of the freshwater wetlands on the Property, and he had knowledge of the need for a permit from DEM prior to altering East Sneece Brook. On 23 August 1999 and 25 August 1999, DEM inspected the Property. On October 8, 1999, DEM issued the NIE to St Godard. On 10 March 2000, DEM inspectors met St. Godard at the Property, and an agreement was reached on restoration of some of the altered wetlands. DEM’s inspectors advised St. Godard that he needed permits for much of the activity he stated he wanted to perform on the Property. St. Godard said he understood and that he would not undertake any further activity within freshwater wetlands without obtaining a permit. On 20 March 2000, DEM inspected the Property and observed that some of the agreed upon restoration was completed, but more remained to be done. St. Godard stated he would install the plantings in the Spring. Respondents have failed to take any action to mitigate the noncompliance. On 6 October 2017, DEM’s inspector spoke with St. Godard about the violations. St. Godard stated that he had no intentions of restoring the freshwater wetlands. A review of 2019 aerial photographs revealed that all the violations observed on 5 October 2017 are present as well as some new violations.
- (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:** Respondents had complete control over the violation, and the violation was foreseeable. St. Godard had knowledge that the Stream is a freshwater wetland and knowledge of the Wetland Regulations, yet Respondents failed to apply to DEM for a permit prior to altering the Stream.
- (10) **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 \$5,000	\$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: Wetland Alterations within Swamp

VIOLATION NOs.: D (1) through D (6)

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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands on the Property by clearing, filling (in the form of at least soil material, gravel, concrete, crushed asphalt, mulch, and bricks), grading, establishing lawn, building raised landscaping beds, constructing a rip rap wall, and creating paths within Swamp. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: Prior to the alterations, the Swamp was largely naturally vegetated and undisturbed, particularly the portion of the Swamp in the northeast section of the Property. The portion of the Swamp has since been filled repeatedly and raised (filled) trails have been created through it. (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: Approximately 21 years. The alterations have been undertaken at various times from March 1999 through Spring 2019. (6) Areal extent of the violation: Approximately 15,000 square feet. 		
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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. St. Godard had knowledge of the freshwater wetlands on the Property, and he had knowledge of the need for a permit from DEM prior to altering East Sneeck Brook. On 23 August 1999 and 25 August 1999, DEM inspected the Property. On October 8, 1999, DEM issued the NIE to St Godard. On 10 March 2000, DEM inspectors met St. Godard at the Property, and an agreement was reached on restoration of some of the altered wetlands. DEM’s inspectors advised St. Godard that he needed permits for much of the activity he stated he wanted to perform on the Property. St. Godard said he understood and that he would not undertake any further activity within freshwater wetlands without obtaining a permit. On 20 March 2000, DEM inspected the Property and observed that some of the agreed upon restoration was completed, but more remained to be done. St. Godard stated he would install the plantings in the Spring. Respondents have failed to take any action to mitigate the noncompliance. On 6 October 2017, DEM’s inspector spoke with St. Godard about the violations. St. Godard stated that he had no intentions of restoring the freshwater wetlands. A review of 2019 aerial photographs revealed that all the violations observed on 5 October 2017 are present as well as some new violations.
- (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:** Respondents had complete control over the violation, and the violation was foreseeable. St. Godard had knowledge that the Swamp is a freshwater wetland and knowledge of the Wetland Regulations, yet Respondents failed to apply to DEM for a permit prior to altering the Swamp.
- (10) **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: Wetland Alterations within Perimeter Wetland, Riverbank Wetland and Floodplain
 VIOLATION NOs.: D (1) through D (6)

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		
<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 Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands on the Property by clearing, filling (in the form of at least soil material, gravel, crushed asphalt and mulch), grading, establishing lawn, building raised landscaping beds, constructing various structures, paving, and storing vehicles and landscaping/construction materials within Perimeter Wetland associated with the Swamp, Riverbank Wetland associated with East Sneece Brook and the Stream and Floodplain. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: Prior to the alterations, the Perimeter Wetland was mostly developed (paved/historically maintained). The Perimeter Wetland in the northeast section of the Property was historically maintained (not forested or vegetated); however, the hoop-house storage structure is not historic nor is the filling and paving that occurred throughout the remainder of the Perimeter Wetland. The Perimeter Wetland in the west portion of the Property was naturally vegetated. Most of the Perimeter Wetland in the south portion of the Property was historically maintained except for a couple of small areas. Prior to the alterations, the Riverbank Wetlands were natural and vegetated aside from the portion that extends into some of the existing maintained lawn associated with the residence and some areas generally south of the horse corral. (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: Approximately 21 years. The alterations have been undertaken at various times from March 1999 through Spring 2019. (6) Areal extent of the violation: Approximately 45,000 square feet (approximately 1 acre). 		
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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. St. Godard had knowledge of the freshwater wetlands on the Property, and he had knowledge of the need for a permit from DEM prior to altering East Sneeck Brook. On 23 August 1999 and 25 August 1999, DEM inspected the Property. On October 8, 1999, DEM issued the NIE to St Godard. On 10 March 2000, DEM inspectors met St. Godard at the Property, and an agreement was reached on restoration of some of the altered wetlands. DEM’s inspectors advised St. Godard that he needed permits for much of the activity he stated he wanted to perform on the Property. St. Godard said he understood and that he would not undertake any further activity within freshwater wetlands without obtaining a permit. On 20 March 2000, DEM inspected the Property and observed that some of the agreed upon restoration was completed, but more remained to be done. St. Godard stated he would install the plantings in the Spring. Respondents have failed to take any action to mitigate the noncompliance. On 6 October 2017, DEM’s inspector spoke with St. Godard about the violations. St. Godard stated that he had no intentions of restoring the freshwater wetlands. A review of 2019 aerial photographs revealed that all the violations observed on 5 October 2017 are present as well as some new violations.
- (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:** Respondents had complete control over the violation, and the violation was foreseeable. St. Godard had knowledge that the Perimeter Wetland, Riverbank Wetland and Floodplain are freshwater wetlands and knowledge of the Wetland Regulations, yet Respondents failed to apply to DEM for a permit prior to altering the Perimeter Wetland, Riverbank Wetland and Floodplain.
- (10) **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