

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

**IN RE: Strategic Commercial Realty, Inc.
CHERENZIA EXCAVATION, INC.**

FILE NO.: OCI-FW-20-74

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 23 March 2020, Strategic Commercial Realty, Inc. applied to DEM’s Office of Water Resources (“OWR”) for a freshwater wetland permit for a solar project on the property that is the subject of this Notice of Violation (“NOV”). During the application review, OWR identified alleged freshwater wetland violations on the property. On 24 April 2020, OWR stopped processing the application and referred the case to DEM’s Office of Compliance and Inspection (“OC&I”). On 26 May 2020, OC&I met with Respondents’ consultant on the property to determine the nature and extent of the violations. On 31 August 2020, OC&I received a proposed plan submitted by Respondents’ consultant to restore the freshwater wetlands. On 9 September 2020, OC&I met with Respondents’ consultant at the property to discuss the plan. On 17 November 2020, OC&I approved the plan to restore the freshwater wetlands. On 15 January 2021, OC&I inspected the property and determined that all the restoration work is complete, except for the installation of plantings.

C. Facts

- (1) The property is located approximately 2,500 feet north of the terminus of White Rock Road at 109 White Rock Road, Assessor’s Plat 9, Lot 10-1 in Westerly, Rhode Island (the “Property”).
- (2) Strategic Commercial Realty, Inc. (“Strategic”) owns the Property. Strategic acquired ownership of the Property on 1 March 2018.
- (3) CHERENZIA EXCAVATION, INC. (“Cherenzia”) owned the Property at all other times relevant to the NOV. Cherenzia acquired ownership of the Property on 2 November 1998 and sold the Property to Strategic on 1 March 2018.

- (4) On 26 May 2020 and 9 September 2020, OC&I inspected the Property. The inspections revealed alterations to freshwater wetlands.
- (5) On 17 November 2020, OC&I received a plan titled *Wetland Restoration Plan Existing Conditions Rawson Materials White Rock Quarry A.P. 9, Lot 10-1 Westerly, RI*, 4 sheets, that was prepared by Scott P. Rabideau on behalf of Respondents to restore the freshwater wetlands on the Property (the “Wetland Restoration Plan”). The plan shows wetlands delineated by A series wetland flags (the “A-Series Wetland”) and B series wetland flags (the “B-Series Wetland”).
- (6) On 18 November 2020, OC&I approved the Wetland Restoration Plan (the “Approved Plan”).
- (7) On 15 January 2021, OC&I inspected the Property and determined that all work shown on the Approved Plan is complete, except for the installation of plantings.
- (8) OC&I’s inspections on 26 May 2020, 9 September 2020 and 15 January 2021 and review of aerial photographs revealed the following:
 - (a) Water flowed into and filled (with sediment) the B-Series Wetland through stormwater runoff and erosion. Evidence of runoff is first visible in aerial photographs taken in 2003. This activity resulted in approximately 35,000 square feet of disturbance within freshwater wetland;
 - (b) Water flowed into and filled (with sediment) the A-Series Wetland through stormwater runoff and erosion. Evidence of the runoff is first visible in aerial photographs taken in 2008. This activity resulted in approximately 23,000 square feet of disturbance within freshwater wetland;
 - (c) At least clearing, stumping, grubbing, grading, soil disturbances, and filling occurred within Forested Wetland (including overlapping Riverbank Wetland) to create a dirt access road. These activities are first visible in aerial photographs taken in 2008 and resulted in the alteration of approximately 1,000 square feet of freshwater wetland;
 - (d) At least clearing, excavating, stumping, grubbing, filling (with various quarry materials) and soil disturbances occurred within Riverbank Wetlands. These activities are first visible in aerial photographs taken in 2008 and resulted in the alteration of approximately 22,500 square feet of freshwater wetland; and

- (e) At least clearing, filling, excavating and soil disturbances occurred within previously restored Riverbank Wetland. These activities are first visible in aerial photographs taken in April 2018 and resulted in the alteration of approximately 13,500 square feet of freshwater wetland.
- (9) The A-Series Wetland and the B-Series Wetland have been hydrologically connected to Pawcatuck River at all times relevant to the NOV.
- (10) Pawcatuck River is a Class B water pursuant to Part 1.25(L)(1) of the *Water Quality Regulations (250-RICR-150-05-1)* [effective August 19, 2018 to Current] (the “Water Quality Regulations”). This classification has been in effect at all times relevant to the NOV.
- (11) The A-Series Wetland and the B-Series Wetland are Class B waters pursuant to Part 1.9(E)(3) of the Water Quality Regulations. This classification has been in effect at all times relevant to the NOV.
- (12) The designated uses for Class B waters include fish and wildlife habitat and shall have good aesthetic value, pursuant to Part 1.9(B)(3) of the Water Quality Regulations. This designation has been in effect at all times relevant to the NOV.
- (13) Class B waters shall, at a minimum, be free of pollutants in concentrations or combinations or from anthropogenic activities subject to these regulations that adversely affect the physical integrity of the habitat pursuant to Part 1.10(B)(1)(b) of the Water Quality Regulations. These standards have been in effect at all times relevant to the NOV.
- (14) Class B waters shall be free of pollutants in concentrations or combinations that:
 - (a) Settle to form deposits that are unsightly to such a degree as to create a nuisance, or interfere with the existing or designated uses pursuant to Part 1.10(B)(2)(a) of the Water Quality Regulations; and
 - (b) Produce change the color of the receiving water in such concentrations that adversely affect its existing or designated uses pursuant to Part 1.10(B)(2)(c) of the Water Quality Regulations.

These standards have been in effect at all times relevant to the NOV.

- (15) The stormwater runoff from the Property, containing sediment, adversely impacted the designated uses of the A-Series Wetland and the B-Series Wetland for fish and wildlife habitat and the aesthetic value of the wetlands.
- (16) Respondents did not have authorization to discharge pollutants from the Property in concentrations that adversely affected the A-Series Wetland and the B-Series Wetland or the designated uses of these waters.

- (17) The activities described in subsection C(8) above were not exempt in accordance with the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* in effect at the time of the activities.
- (18) Respondents did not receive a permit from DEM to alter the freshwater wetlands in the areas described in subsection C(8) 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) **R.I. Gen. Laws Section 46-12-5(a)** – prohibiting the placement of any pollutant in a location where it is likely to enter the waters or to place or cause to be placed any solid waste materials, junk or debris of any kind whatsoever, organic or nonorganic, in any waters.
- (3) **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.
- (4) ***Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* [effective 31 December 2001 to 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 6.0.
- (5) ***Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* [effective 1 June 2007 to 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 6.0.
- (6) ***Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* [effective 24 June 2009 to 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 6.0.
- (7) ***Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* [effective 28 December 2010 to 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 6.0.

- (8) ***Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1) [effective 16 July 2014 to Current] (the “Wetland Rules”), 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.
- (9) ***Water Quality Regulations [effective 31 December 2001 to 11 July 2006]***
- (a) **Rule 8(D)(1)(a)(ii)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that adversely affect the physical integrity of the habitat;
 - (b) **Rule 8(D)(1)(b)(iii)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that produce odor or change the color of the receiving water to such a degree as to interfere with its designated uses;
 - (c) **Rule 9(A)** — prohibiting the discharge of pollutants into any waters of the State or performing any activities alone or in combination which DEM determines will likely result in the violation of any State water quality criterion or interfere with one or more of the existing or designated uses assigned to the receiving waters or to downstream waters. In addition, Best Management Practices, as determined by DEM, shall be used to control erosion, sedimentation and runoff;
 - (d) **Rule 11(B)** – prohibiting the discharge of pollutants into the waters of the State except as in compliance with the provisions of R.I. Gen. Laws Chapter 46-12, or other applicable chapters, of the Rhode Island General Laws or these regulations, and pursuant to the terms and conditions of an approval issued by DEM thereunder; and
 - (e) **Rule 13(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to waters of the State.
- (10) ***Water Quality Regulations [effective 11 July 2006 to 2 June 2009]***
- (a) **Rule 8(D)(1)(a)(ii)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that adversely affect the physical integrity of the habitat;
 - (b) **Rule 8(D)(1)(b)(iii)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that produce odor or change the color of the receiving water to such a degree as to interfere with its designated uses;

- (c) **Rule 9(A)** — prohibiting the discharge of pollutants into any waters of the State or performing any activities alone or in combination which DEM determines will likely result in the violation of any State water quality criterion or interfere with one or more of the existing or designated uses assigned to the receiving waters or to downstream waters. In addition, Best Management Practices, as determined by DEM, shall be used to control erosion, sedimentation and runoff;
 - (d) **Rule 11(B)** – prohibiting the discharge of pollutants into the waters of the State except as in compliance with the provisions of R.I. Gen. Laws Chapter 46-12, or other applicable chapters, of the Rhode Island General Laws or these regulations, and pursuant to the terms and conditions of an approval issued by DEM thereunder; and
 - (e) **Rule 13(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to waters of the State.
- (11) ***Water Quality Regulations [effective 2 June 2009 to 28 December 2010]***
- (a) **Rule 8(D)(1)(a)(ii)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that adversely affect the physical integrity of the habitat;
 - (b) **Rule 8(D)(1)(b)(iii)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that produce odor or change the color of the receiving water to such a degree as to interfere with its designated uses;
 - (c) **Rule 9(A)** — prohibiting the discharge of pollutants into any waters of the State or performing any activities alone or in combination which DEM determines will likely result in the violation of any State water quality criterion or interfere with one or more of the existing or designated uses assigned to the receiving waters or to downstream waters. In addition, Best Management Practices, as determined by DEM, shall be used to control erosion, sedimentation and runoff;
 - (d) **Rule 11(B)** – prohibiting the discharge of pollutants into the waters of the State except as in compliance with the provisions of R.I. Gen. Laws Chapter 46-12, or other applicable chapters, of the Rhode Island General Laws or these regulations, and pursuant to the terms and conditions of an approval issued by DEM thereunder; and
 - (e) **Rule 13(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to waters of the State.

(12) ***Water Quality Regulations*** [effective 28 December 2010 to 19 August 2018]

- (a) **Rule 8(D)(1)(a)(ii)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that adversely affect the physical integrity of the habitat;
- (b) **Rule 8(D)(1)(b)(iii)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that produce odor or change the color of the receiving water to such a degree as to interfere with its designated uses;
- (c) **Rule 9(A)** — prohibiting the discharge of pollutants into any waters of the State or performing any activities alone or in combination which DEM determines will likely result in the violation of any State water quality criterion or interfere with one or more of the existing or designated uses assigned to the receiving waters or to downstream waters. In addition, Best Management Practices, as determined by DEM, shall be used to control erosion, sedimentation and runoff;
- (d) **Rule 11(B)** – prohibiting the discharge of pollutants into the waters of the State except as in compliance with the provisions of R.I. Gen. Laws Chapter 46-12, or other applicable chapters, of the Rhode Island General Laws or these regulations, and pursuant to the terms and conditions of an approval issued by DEM thereunder; and
- (e) **Rule 13(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to waters of the State.

(13) **Water Quality Regulations**

- (a) **Part 1.10(B)(1)(b)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that adversely affect the physical integrity of the habitat;
- (b) **Part 1.10(B)(2)(c)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that produce odor or change the color of the receiving water to such a degree as to interfere with its designated uses;

- (c) **Part 1.11(A)** — prohibiting the discharge of pollutants into any waters of the State or performing any activities alone or in combination which DEM determines will likely result in the violation of any State water quality criterion or interfere with one or more of the existing or designated uses assigned to the receiving waters or to downstream waters. In addition, Best Management Practices, as determined by DEM, shall be used to control erosion, sedimentation and runoff;
- (d) **Part 1.13(B)** – prohibiting the discharge of pollutants into the waters of the State except as in compliance with the provisions of R.I. Gen. Laws Chapter 46-12, or other applicable chapters, of the Rhode Island General Laws or these regulations, and pursuant to the terms and conditions of an approval issued by DEM thereunder; and
- (e) **Part 1.15(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to waters of the State.

E. Order

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

- (1) **By 15 May 2021**, complete the installation of all plantings shown on the Approved Plan.
- (2) 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.
- (3) All areas of disturbed surface soils shall be covered with high organic plantable soil within the A-Series Wetland and the B-Series Wetland (up to 6 inches, as necessary, to be determined by DEM) and plantable soil within Riverbank Wetlands (4 inches minimum, as necessary), seeded with a wetland seed mix (within the A-Series Wetland and the B-Series Wetland) or a wildlife conservation grass seed mixture (within the Riverbank Wetlands), and covered with a mat of loose hay mulch (as previously described above).
- (4) 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 wetlands. 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 and/or prior to the contractor vacating the site, all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.

- (5) 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 valid permit from DEM, unless the activity is exempt under the Wetland Rules.

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:

\$21,250

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective 31 December 2001 to Current] (the “Penalty Regulations”) 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 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)* [effective 27 November 2014 to Current]
- (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) An original signed copy of the NOV is being forwarded to the Town of Westerly, 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 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) 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 David E. Chopy at (401) 222-1360 ext. 77400 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: _____



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS AND WATER POLLUTION

File No.: OCI-FW-20-74

Respondents: Cherenzia and Strategic

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(13) Stormwater Runoff and Sediment Discharges to A-Series Wetland and B-Series Wetland – Facts C(8)(a) and (b)	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$15,000	1 violation	\$15,000
D(1) and D(5) Wetland Alterations within Forested Wetland – Fact C(8)(c)	Type I <i>(\$5,000 Max. Penalty) *</i>	Moderate	\$1,250	1 violation	\$1,250
D(1), D(5), D(6), D(7) and D(8) Wetland Alterations within Riverbank Wetlands – Fact C(8)(d)	Type I <i>(\$5,000 Max. Penalty) *</i>	Major	\$2,500	1 violation	\$2,500
D(1) and D(8) Wetland Alterations within Riverbank Wetland – Fact C(8)(e)	Type I <i>(\$5,000 Max. Penalty) *</i>	Major	\$2,500	1 violation	\$2,500
<i>SUB-TOTAL</i>					\$21,250

*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.

ADMINISTRATIVE PENALTY SUMMARY (continued)

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 = \$21,250

PENALTY MATRIX WORKSHEET

CITATION: Stormwater Runoff and Sediment Discharges to Freshwater Wetlands – Facts C(8)(a) and (b)
 VIOLATION NOS.: D(1) through D(13)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	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 Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents discharged stormwater runoff and sediment to freshwater wetlands on the Property without a permit from DEM. Preventing discharges of stormwater to waters of the State without a permit from DEM and preventing sediment impacts to waters of the State from stormwater runoff are primary goals of the regulatory program.
- (2) **Environmental conditions:** The Property is an active quarry and mining operation. A portion of the Property abuts Pawcatuck River. Numerous freshwater wetlands are located throughout the Property, including the A-Series Wetland and the B-Series Wetland. Prior to the stormwater runoff and sediment discharges to the A-Series Wetland and the B-Series Wetland, the freshwater wetlands were vegetated and undisturbed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Sediment associated with sand and gravel.
- (5) **Duration of the violation:** Full duration unknown – at least approximately 18 years. Aerial photographs taken in 2003 first show stormwater runoff and sediment impact to the B-Series Wetland. Aerial photographs taken in 2008 first show stormwater runoff and sediment impact to the A-Series Wetland.
- (6) **Areal extent of the violation:** Approximately 1.38 acres.

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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. Respondents took reasonable and appropriate steps to mitigate the noncompliance by installing erosion and sediment controls to prevent stormwater runoff and sediment from discharging to the freshwater wetlands and by restoring the freshwater wetlands in accordance with the Approved Plan. The remaining restoration requirement is the installation and maintenance of plants.
- (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 their failure to comply with the law and the regulations. Respondents had full control over the Property 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.

<u> </u> X <u> </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000 \$15,000	\$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	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations within Forested Wetland – Fact C (8)(c)

VIOLATION NOs.: D (1) and D(5)

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD <small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from 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 at least clearing, stumping, grubbing, grading, soil disturbances, and filling within Forested Wetland (including overlapping Riverbank Wetland) to create a dirt access road. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program. (2) Environmental conditions: The Forested Wetland was vegetated and undisturbed prior to the alterations. (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 approximately 13 years. Aerial photographs taken in 2008 first show the unauthorized road. (6) Areal extent of the violation: Approximately 1,000 square 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. Respondents took reasonable and appropriate to mitigate the noncompliance by restoring the freshwater wetlands in accordance with the Approved Plan. The remaining restoration requirement is the installation and maintenance of plants.
- (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 their failure to comply with the law and the regulations. Respondents had full control over the Property 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	<u>X</u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500 \$1,250	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations within Riverbank Wetlands – Fact C (8)(d)

VIOLATION NOs.: D (1), D(5), D(6), D(7) and D(8)

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 at least clearing, excavating, stumping, grubbing, filling (with various quarry materials) and soil disturbances within Riverbank Wetlands. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Riverbank Wetlands were vegetated and undisturbed prior to the alterations. (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 approximately 13 years. Aerial photographs taken in 2008 first show the unauthorized alterations. (6) Areal extent of the violation: Approximately 22,500 square 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. Respondents took reasonable and appropriate to mitigate the noncompliance by restoring the freshwater wetlands in accordance with the Approved Plan. The remaining restoration requirement is the installation and maintenance of plants.
- (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 their failure to comply with the law and the regulations. Respondents had full control over the Property 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.

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

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations within Riverbank Wetland – Fact C (8)(e)

VIOLATION NOs.: D (1) and D (8)

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD <small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from 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 at least clearing, filling, excavating and soil disturbances within Riverbank Wetland. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Riverbank Wetland was previously altered and restored in 2013 by removal of fill, backfilling of settling ponds, seeding and replanting of trees. (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 3 years – aerial photographs taken in April 2018 show the alterations within the Riverbank Wetland. (6) Areal extent of the violation: Approximately 13,500 square 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. Respondents took reasonable and appropriate to mitigate the noncompliance by restoring the freshwater wetlands in accordance with the Approved Plan. The remaining restoration requirement is the installation and maintenance of plants.
- (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 their failure to comply with the law and the regulations. Strategic had full control over the Property 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.

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