

CERTIFIED MAIL

Kamal Hingorany
Narragansett Engineering, Inc.
3102 East Main Road
Portsmouth, RI 02871-4205

RE: **NOTICE OF VIOLATION AND SUSPENSION OF LICENSE**
File Name: Kamal Hingorany
License No.: D3051

Dear Mr. Hingorany:

Enclosed please find a Notice of Violation and Suspension of License ("NOV"). As set forth within the NOV, you may wish to request a formal hearing. In that regard your request must be made in writing and received by the Administrative Adjudication Division (AAD) at the address listed immediately below within thirty (30) days of the receipt of this letter:

Bonnie Stewart, Clerk
Department of Environmental Management
Administrative Adjudication Division
235 Promenade Street, Room 310
Providence, RI 02908

A copy of the request for a hearing should be sent to Attorney Gregory Schultz at the Office of Legal Services, 235 Promenade Street, Room 450, Providence, Rhode Island 02903.

Correspondence other than a request for a hearing should be sent to the following address:

David Chopy, Supervising Sanitary Engineer
Department of Environmental Management
Office of Compliance and Inspection
235 Promenade Street, Room 220
Providence, Rhode Island 02908-5767

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Name: Kamal Hingorany

RE: Notice of Violation and Suspension of License

PLEASE BE ADVISED that correspondence with the Office of Compliance and Inspection, including requests to arrange an informal meeting to discuss this Order and Penalty, will not be deemed a request for a formal hearing and will not protect your right to request a formal hearing.

Sincerely,

David Chopy

Supervising Sanitary Engineer

Office of Compliance and Inspection

Enclosure: Notice of Violation and Suspension of License

xc Gregory Schultz, Esq., Office of Legal Services, DEM
Kathleen Lanphear, Administrative Adjudication Division, DEM
Russell Chateaufneuf, Chief, Office of Water Resources, DEM
Brian Moore, DEM, Office of Water Resources

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

IN RE: Kamal Hingorany

LICENSE NO. #D3051

NOTICE OF VIOLATION AND SUSPENSION OF LICENSE

A. Introduction

Pursuant to *Sections 5-56.1-8, 42-17.1-2(u) and 42-17.6-3 of the Rhode Island General Laws, as amended*, you are hereby notified that the Director of the Department of Environmental Management (the "Director" of "DEM") has reasonable grounds to believe that the above-named party ("Respondent") has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) The Respondent is currently licensed by DEM as a Class III individual sewage disposal system ("ISDS") designer (License #D3051).
- (2)(a) On or about January 26, 2000 the Respondent submitted to DEM an ISDS application redesign (# 9927-2701) for new building construction for property located on Amazon Drive, in the town of Portsmouth, Plat 67, Lot 41 (the "New Building Application"). DEM returned the New Building Application to the Respondent as unacceptable on February 3, 2000 for the following reasons:
 - (i) Failure to show the location of the septic tank on the design plans;
 - (ii) Failure to show the interconnection of the leachfield trenches on the design plans; and
 - (iii) Requirement for details on "wood tie" shown on the design plans.
- (b) The Respondent resubmitted the New Building Application to DEM on February 8, 2000. DEM approved the New Building Application on February 10, 2000. The ISDS was installed and conformed on December 19, 2000.
- (3)(a) On or about September 12, 2000 the Respondent submitted to DEM an ISDS application redesign (#9327-0529) for new building construction for property located on Peggy Lane, in the town of Portsmouth, Plat 36, Lot 67 (the "New Building Application"). DEM approved the New Building Application on

September 13, 2000. A condition of the approval was that the ISDS be inspected by DEM after excavation of the bottom of leaching area.

- (b) DEM conducted a compliance inspection on the property on October 5, 2000. The inspection revealed the following:
 - (i) The ISDS was constructed without an inspection by DEM of the bottom of the leaching area after excavation.
 - (c) DEM ordered that test holes be dug in the ISDS at the time of the October 5, 2000 inspection. The DEM inspector approved the ISDS construction and authorized that the ISDS construction continue. The ISDS was conformed by DEM on November 8, 2000.
- (4)(a) On or about February 1, 2000 the Respondent submitted to DEM an ISDS application (#9827-2634) for new building construction for property located on Sakonnet Drive, in the town of Portsmouth, Plat 2, Lot 89 (the "New Building Application"). DEM returned the New Building Application to the Respondent as unacceptable on February 18, 2000 for the following reasons:
 - (i) Failure to show percolation rates on the design plans;
 - (ii) Failure to show the design depth on the design plans;
 - (iii) Failure to show the size of the leachfield on the design plans;
 - (iv) Failure to provide copy of 2 bedroom deed restriction;
 - (v) Failure to provide 200 foot radius map;
 - (vi) Failure to show edge of roadway on the design plans;
 - (vii) Failure to show limits of driveway and barrier to prevent driving on the ISDS on the design plans; and
 - (viii) Failure to show impermeable barrier on the design plans.
- (b) The Respondent resubmitted the New Building Application to DEM on May 10, 2000. DEM returned the New Building Application to the Respondent as unacceptable on June 13, 2000 for the following reason:
 - (i) Failure to address 6 of the 8 deficiencies identified in the February 18, 2000 comment letter to the Respondent from DEM.
- (c) The Respondent resubmitted the New Building Application to DEM on June 15, 2000. DEM returned the New Building Application to the Respondent as unacceptable on June 22, 2000 for the following reasons:
 - (i) Failure to place manhole over septic tank outlet;

- (ii) Failure to show edge of gravel road on the design plans;
 - (iii) Requirement to revise note on the design plans to identify proper number of leachfield trenches;
 - (iv) Failure to maintain minimum setback of 15 feet from the leachfield to the adjacent dwelling;
 - (v) Failure to show ledge profile through the leachfield;
 - (vi) Failure to identify proper water table depth on the application.
- (d) The Respondent resubmitted the New Building Application to DEM on July 5, 2000. DEM returned the New Building Application to the Respondent as unacceptable on August 1, 2000 for the following reasons:
- (i) Failure to show outlet depth on the design plans;
 - (ii) Failure to show reinforced concrete wall on the design plans;
 - (iii) Failure to show limits of roadway right of way and traveled way on the design plans; and
 - (iv) Requirement to notify the building official and all property owners within 200 feet of proposed ISDS.
- (e) The Respondent resubmitted the New Building Application to DEM on September 13, 2000. DEM returned the New Building Application to the Respondent as unacceptable on October 5, 2000 for the following reasons:
- (i) Failure to show impermeable barrier for the reinforced concrete wall on the design plans;
 - (ii) Requirement to verify the cesspool location on an adjoining lot;
 - (iii) Requirement to locate sump pump drain on an adjoining lot;
 - (iv) Failure to show accurate edge of pavement for paved roadway and property line;
 - (v) Failure to show accurate location of North Water Street on the design plans;
 - (vi) Failure to show existing and proposed grade elevations on the design plans; and
 - (vii) Requirement to indicate building official on the abutters list.

- (f) The Respondent resubmitted the New Building Application to DEM on November 6, 2000. DEM returned the New Building Application to the Respondent as unacceptable on November 20, 2000 for the following reasons:
 - (i) Failure to show note on design plans concerning impermeable liner on concrete wall;
 - (ii) Requirement to remove “gravel” note from road description on the design plans;
 - (iii) Failure to label streets on the design plans; and
 - (iv) Recommendation to consider advanced treatment design.
- (g) The Respondent resubmitted the New Building Application to DEM on December 1, 2000. DEM returned the New Building Application to the Respondent as unacceptable on December 11, 2000 for the following reasons:
 - (i) Failure to provide copy of recorded 2 bedroom deed restriction; and
 - (ii) Failure to provide a letter from the water authority granting permission for ISDS to be within 25 feet of the water line.
- (h) The Respondent resubmitted the New Building Application to DEM on December 18, 2000. DEM returned the New Building Application to the Respondent as unacceptable on December 22, 2000 for the following reasons:
 - (i) Failure to show outdoor toilet /shower stall on adjoining lot along shared property line and water lines or drains from the stall;
 - (ii) Failure to notify proper owner of abutting property;
 - (iii) Failure to provide proof of service to abutting property owner and the town; and
 - (iii) Requirement to revise plans to show water service properly installed as indicated in letter from town.
- (i) The Respondent resubmitted the New Building Application to DEM on January 19, 2001. DEM approved the New Building Application on February 20, 2001. A condition of the approval was that the designer notify DEM prior to the start of construction on the ISDS.
- (j) DEM conducted a compliance inspection on the property on July 26, 2001. The inspection revealed the following:
 - (i) Construction of the ISDS had begun without prior notification to DEM;

- (ii) The house and septic tank were not constructed in the location shown on the approved design plans; and
 - (iii) Removal of ledge was occurring in the area of the ISDS.
- (k) DEM ordered that all work on the ISDS be stopped until a new design was submitted and approved by DEM.
- (l) The Respondent resubmitted a revised New Building Application to DEM on August 3, 2001. DEM returned the revised New Building Application to the Respondent as unacceptable on October 24, 2001 for the following reasons:
- (i) Failure to show updated and accurate ledge profile;
 - (ii) Incorrect profile shown on design plans that does not match photographs provided by abutting property owners;
 - (iii) Requirement that design include a bottomless sand filter;
 - (iv) Requirement that new design plan reflect proper "as is" ledge elevations;
 - (v) Requirement that no blasting is allowed; and
 - (vi) Requirement to provide a new variance request form and request proper variances.
- (m) The Respondent resubmitted a revised New Building Application to DEM on March 4, 2002. DEM returned the revised New Building Application to the Respondent as unacceptable on April 9, 2002 for the following reasons:
- (i) Failure to provide existing topography and ledge elevations on the design plans; and
 - (ii) Requirement to show foundation and elevation on design plans if constructed.
- (n) The Respondent resubmitted a revised New Building Application to DEM on May 13, 2002. DEM approved the revised New Building Application on June 12, 2002. The ISDS was conformed by DEM on April 22, 2003.
- (5) Findings of DEM's review of the each of the above referenced ISDS applications and eight (8) additional ISDS applications (collectively, "the ISDS Applications") were presented to the ISDS Designer Licensing Review Panel (the "Panel"). The Panel is appointed by the Director to review the actions of licensed designers and make recommendations to the DEM on whether a designer's license should be suspended or revoked and the length of time for the suspension or revocation. The Panel met on January 25, 2002 and reviewed the Respondent's actions regarding the ISDS Applications. The Panel recommended to DEM that the Respondent's License #D3051 be suspended sixty (60) days.

- (6) On November 4, 2002 DEM issued to the Respondent a Notice of Intent to Suspend or Revoke the Respondent's License #D3051 (the "NOI"). The NOI was issued for violating the provisions of Rhode Island General Laws, Section 5-56.1-1 et seq. and the Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction, and Maintenance of Individual Sewage Disposal Systems (the "ISDS Regulations") relating to the Respondent's actions regarding the ISDS Applications. The NOI afforded the Respondent the opportunity to request a preliminary hearing before DEM to show cause why DEM should not suspend or revoke the Respondent's license.
- (7) The Respondent received said NOI and requested a preliminary hearing before DEM. The preliminary hearing was held on December 4, 2002. The Respondent provided DEM a letter dated December 12, 2002 concerning the ISDS Applications and additional verbal information on his actions, which the DEM considered.
- (8) The Respondent failed to show cause why DEM should not suspend or revoke the Respondent's License #D3051.
- (9) DEM has determined that the three (3) ISDS applications summarized in the NOV provide sufficient evidence to support suspension of the Respondent's license.

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 § 5-56.1-8 relating to the authority to suspend a designer's license where the licensed designer has demonstrated gross or repeated negligence, incompetence or misconduct in the representation of site conditions in an application to DEM, design of an ISDS, or inspection or certification of installation of an ISDS.
- (2) ISDS Regulations effective October 1, 1998 (the "ISDS 1998 Regulations"), Section SD 2.02B(a) relating to the requirement to provide all pertinent information on the ISDS application form.
- (3) ISDS 1998 Regulations, Section SD 2.02B(c) relating to the requirement to submit basic design data with an ISDS application.
- (4) ISDS 1998 Regulations, Section SD 2.02B(d)(1) relating to the requirement to show existing and proposed finished grades in the vicinity of the system.
- (5) ISDS 1998 Regulations, Section SD 2.02B(d)(8), (10), and (13) relating to the requirement to show the locations of specific features within 200 feet of the ISDS.

- (6) ISDS 1998 Regulations, Section SD 3.05(d) relating to the requirement that retaining walls shall be concrete and designed with an impermeable barrier.
- (7) ISDS 1998 Regulations, Section SD 10.01 relating to the requirement that any ISDS designed for a dwelling with less than 3 bedrooms include a deed restriction.
- (8) ISDS 1998 Regulations, Section SD 11.03 relating to the requirement to design an ISDS with proper inter-connection of the ends of all distribution lines.
- (9) ISDS 1998 Regulations Section SD 20.00 (e) relating to the requirement that the variance application identify the name and address of the local building official and property owners within 200 feet of any component of the ISDS.
- (10) ISDS 1998 Regulations, Section SD 20.00 (g) relating to the requirement that the local municipal building official and property owners within 200 feet of any component of the ISDS be notified of the variance application.
- (11) ISDS 1998 Regulations, Section SD 20.00 (j) relating to the requirement that proof of service be provided to DEM of all notices sent to the building official and abutting property owners on the variance application.
- (12) ISDS 1998 Regulations, Section SD 27.00 (a) relating to the requirement to design an ISDS in accordance with the regulations.
- (13) ISDS 1998 Regulations, Section SD27.00 (b) relating to the requirement that the designer stop work on the construction of an ISDS and notify DEM if conditions in the field are not consistent with information in the application or may impact the siting, design, or operation of the ISDS.
- (14) ISDS 1998 Regulations, Section SD 27.00 (i) relating to the requirement that the designer notify the DEM and stop construction if conditions are encountered during construction of the ISDS that are not in accordance with the approval issued by DEM.
- (15) ISDS Regulations effective March 8, 2000 (the "ISDS 2000 Regulations"), Section SD 2.02 (a) relating to the requirement to provide all pertinent information on the ISDS application form.
- (16) ISDS 2000 Regulations, Section SD 2.02 (c) relating to the requirement to submit basic design data with an ISDS application.
- (17) ISDS 2000 Regulations, Section SD 2.02 (d)(1) relating to the requirement to show existing and proposed finished grades in the vicinity of the system.
- (18) ISDS 2000 Regulations, Section SD 2.02 (d)(8), (10), and (13) relating to the requirement to show the locations of specific features within 200 feet of the ISDS.

- (19) ISDS Regulations effective February 6, 2002 (the "ISDS 2002 Regulations"), Section SD 2.02 (a) relating to the requirement to provide all pertinent information on the ISDS application form.
- (20) ISDS 2002 Regulations, Section SD 2.02 (c) relating to the requirement to submit basic design data with an ISDS application.
- (21) ISDS 2002 Regulations, Section SD 2.02 (d)(1) relating to the requirement to show existing and proposed finished grades in the vicinity of the system.
- (22) ISDS 2002 Regulations, Section SD 27.00 (a) relating to the requirement to design an ISDS in accordance with the regulations.

D. Order

Based upon the violations alleged above and pursuant to *R.I. Gen. Laws 5-56.1-8 and Sections SD 25.05(b) and SD 25.05 (g) of the ISDS Regulations*, it is hereby **ORDERED** that Designer License #D3051 issued to Kamal Hingorany be suspended for a period of two (2) months, effective thirty (30) days from the receipt of this NOV.

E. Assessment of Penalty

- (1) Pursuant to *R.I. Gen. Laws §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:

Two Thousand Two Hundred Dollars (\$ 2,200.00)

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the Director within thirty (30) days of your receipt of this NOV. Payment shall be in the form of a certified check or money order made payable to the "General Treasury - Water & Air Protection Program Account," and shall be forwarded to the DEM Office of Management Services, 235 Promenade Street, Providence, Rhode Island 02908-5767, along with a copy of this NOV.

F. Right to Administrative Hearing

- (1) Pursuant to *R.I. Gen. Laws §§5-56.1-8, 42-17.1-2(u)(1), 42-17.6-4 and Chapter 42-35*, each named respondent is entitled to request a hearing before the Director or his/her designee regarding the allegations, orders and/or penalties set forth in Paragraphs B through E above. **All requests for hearing MUST:**
 - (a) Be in writing. *See R.I. Gen. Laws §§42-17.1-2(u)(1) and 42-17.6-4(a)*,

- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division within thirty (30) days of your receipt of this NOV. *See R.I. Gen. Laws Sections 42-17.1-2(u)(1), 42-17.1-2(u)(3), 42-17.6-4(a) and 42-17.7-9;*
- (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; 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 Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.*
- (2) All written requests for hearing must be forwarded to:
- Chief Hearing Officer
DEM - Administrative Adjudication Division
235 Promenade Street, 3RD Floor
Providence, RI 02908-5767
- (3) A copy of each request for hearing must also be forwarded to:
- Gregory Schultz, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
- (4) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (5) 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(u)(5) and 42-17.6-4(b).*
- (6) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (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, please contact Gregory Schultz, DEM's Office of Legal Services at (401) 222-6607. Technical questions should be directed to David Chopy of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7257.

FOR THE DIRECTOR

Dean H. Albro, Chief
DEM Office of Compliance and Inspection

Date:

CERTIFICATION

I hereby certify that on the _____ day of _____ 2003
the within Notice of Violation was forwarded to:

Kamal R. Hingorany
Narragansett Engineering, Inc.
3102 East Main Road
Portsmouth, RI 02871

by Certified Mail, return receipt requested.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION
 WATER COMPLIANCE SECTION

File No.: OC&I/ISDS: #D3051

File Name: Kamal Hingorany

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 (2), C (3), C (8), C (12); Gross negligence, incompetence or misconduct on an ISDS design; Application # 9927-2701	Type I (\$1000 Max. Penalty)	Moderate	\$ 600	1 application	\$ 600
C (14); Gross negligence, incompetence or misconduct on the inspection or certification of an ISDS installation; Application # 9327-0529	Type I (\$1000 Max. Penalty)	Moderate	\$ 600	1 application	\$ 600
C (2)- C(7) and C (9)-C (22); Gross negligence, incompetence or misconduct on the design and inspection or certification of an ISDS installation ; Application # 9827-2634	Type I (\$1000 Max. Penalty)	Major	\$ 1000	1 application	\$ 1000
SUB-TOTAL					\$2,200

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$2,200.00

PENALTY MATRIX WORKSHEET

FILE NO.: OC & I/ISDS #D3051 x-ref Appl.#9927-2701 FILE NAME: Kamal Hingorany
 CITATION: Gross negligence, incompetence or misconduct on an ISDS design
 VIOLATION NO.: C (2), C (3), C (8), and C (12)

TYPE		
<input checked="" type="checkbox"/> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment	<input type="checkbox"/> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment	<input type="checkbox"/> 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.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) The extent to which the act or failure to act was out of compliance. The Respondent failed to provide design plans showing the septic tank, interconnection of leachfield trenches, and details on the "wood tie".</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance. The Respondent was required to resubmit the application plan prior to approval by DEM.</p> <p>(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. DEM did not consider any actions other than those summarized in the NOV in the assessment of the administrative penalty.</p> <p>(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 violation was completely within the control of the Respondent. The Respondent is solely responsible for ensuring that the ISDS is designed in accordance with the ISDS Regulations.</p> <p>(J) Any other factors that may be relevant in determining the amount of a penalty. The Respondent's failure to design the ISDS in a competent and thorough manner resulted in delays in the review of the application.</p>		
___ MINOR	___ X ___ MODERATE	_____ MAJOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1000.00		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800-to-\$1,000	\$600-to-\$800	\$400-to-\$600
	MODERATE	\$ 600-to-\$800 \$600	\$400-to-\$600	\$200-to-\$400
	MINOR	\$400-to-\$600	\$200-to-\$400	\$100-to-\$200

PENALTY MATRIX WORKSHEET

FILE NO.: OC & I/ISDS #D3051 x-ref Appl. #9327-0529 FILE NAME: Kamal Hingorany

CITATION: Gross negligence, incompetence or misconduct on an ISDS inspection

VIOLATION NO.: C (14)

TYPE		
<input checked="" type="checkbox"/> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment	<input type="checkbox"/> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment	<input type="checkbox"/> 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.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) The extent to which the act or failure to act was out of compliance. The Respondent authorized the construction of an ISDS without a bottom inspection by DEM as required by the approval.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance. The Respondent failed to follow the ISDS Regulations in the inspection of an ISDS. The Respondent was ordered by DEM to dig test holes in the ISDS to verify the ISDS was constructed properly. DEM approved the ISDS work that had been completed and authorized that the ISDS construction continue.</p> <p>(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. DEM did not consider any actions other than those summarized in the NOV in the assessment of the administrative penalty</p> <p>(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 violation was completely within the control of the Respondent. The Respondent is solely responsible for ensuring that the ISDS is constructed in accordance with the ISDS Regulations.</p> <p>(J) Any other factors that may be relevant in determining the amount of a penalty. The Respondent's failure to inspect the ISDS in a competent and thorough manner resulted in delays in completion of the ISDS resulting from the requirement to dig test holes.</p>		
<input type="checkbox"/> MINOR	<input checked="" type="checkbox"/> MODERATE	<input type="checkbox"/> MAJOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1000.00		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800-to-\$1,000	\$600-to-\$800	\$400-to-\$600
	MODERATE	\$ 600-to-\$800 \$600	\$400-to-\$600	\$200-to-\$400
	MINOR	\$400-to-\$600	\$200-to-\$400	\$100-to-\$200

PENALTY MATRIX WORKSHEET

FILE NO.: OC & I/ISDS #D3051 x-ref Appl. #9827-2634 FILE NAME: Kamal Hingorany

CITATION: Gross negligence, incompetence or misconduct on an ISDS design and inspection

VIOLATION NO.: C (2)- C (7), C (9)-C (22)

TYPE		
<input checked="" type="checkbox"/> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment	<input type="checkbox"/> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment	<input type="checkbox"/> 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.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) The extent to which the act or failure to act was out of compliance. The Respondent failed to comply with numerous requirements of the ISDS Regulations in the design of the ISDS. The Respondent also failed to notify DEM and stop construction of the work after conditions in the field were identified that did not conform to the approval issued by DEM for the ISDS.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance. The Respondent failed to follow the ISDS Regulations in the design and inspection of an ISDS.</p> <p>(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. DEM did not consider any actions other than those summarized in the NOV in the assessment of the administrative penalty.</p> <p>(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 violation was completely within the control of the Respondent. The Respondent is solely responsible for ensuring that the ISDS is designed and constructed in accordance with the ISDS Regulations.</p> <p>(J) Any other factors that may be relevant in determining the amount of a penalty. The Respondent's failure to design the ISDS properly resulted in ten (10) resubmissions to DEM. DEM had to issue an order suspending construction of the ISDS after DEM identified that the septic tank and house were not being constructed as shown on the approved plans and ledge was uncovered that was not identified in the design plans for the ISDS. The Respondent's failure to design and inspect the ISDS in a competent and thorough manner resulted in delays in completion of the ISDS resulting from the issuance of a suspension of the work by DEM and a redesign of the ISDS to comply with the ISDS Regulations.</p>		
<input type="checkbox"/> MINOR	<input type="checkbox"/> MODERATE	<input checked="" type="checkbox"/> MAJOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1000.00		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800-to-\$1,000 \$1000	\$600-to-\$800	\$400-to-\$600
	MODERATE	\$ 600-to-\$800	\$400-to-\$600	\$200-to-\$400
	MINOR	\$400-to-\$600	\$200-to-\$400	\$100-to-\$200