

CERTIFIED MAIL

Robert C. Schultz  
Schultz Engineering & Construction  
97 Foster Center Road  
Foster, RI 02825

RE: **NOTICE OF VIOLATION AND SUSPENSION OF LICENSE**  
File Name: Robert C. Schultz  
License No.: #D3057 and #D4002

Dear Mr. Schultz:

Enclosed please find a Notice of Violation and Suspension of License ("Notice"). As set forth within the Notice, 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 Timothy Pavilonis 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

Page two

Name: Robert C. Schultz

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 Timothy Pavilonis, Esq., Office of Legal Services, DEM  
Kathleen Lanphear, Administrative Adjudication Division, DEM  
Russell Chateauneuf, Chief, Office of Water Resources, DEM

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

Office of Compliance and Inspection  
(401) 222-4700; Fax (401) 222-3811

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Robert C. Schultz**

**LICENSE NO. #D3057 and #D4002**

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 and Class IV individual sewage disposal system ("ISDS") designer (License #D3057 and License #D4002, respectively).
- (2) The Respondent was previously licensed by DEM as a Class II ISDS designer (License #D2061). License #D2061 was issued to the Respondent on October 1, 1999. The Respondent was informed by DEM on May 16, 2000 that he had met the requirements to obtain a Class III designer license and upon submission of his Class II license certificate he would receive a Class III license certificate. The Respondent was issued License #D3057, which was retroactively effective to January 1, 2000.
- (3)(a) On or about March 2, 2000 the Respondent submitted to DEM an ISDS application (#9512-1833) for new building construction for property located on East Killingly Road, in the town of Foster, Plat 13, Lot 47B (the "New Building Application"). The New Building Application was submitted by the Respondent under Designer License #D2061. DEM returned the New Building Application to the Respondent as unacceptable on April 12, 2000 for the following reasons:
  - (i) Failure to design proper grade of distribution lines;
  - (ii) Failure to provide design plans with accurate scales;
  - (iii) Failure to maintain >100-foot separation distance between the ISDS and a private well; and
  - (iv) Failure to provide 5-foot area around leachfield to be stripped of vegetation and underlying soil.

- (b) The Respondent resubmitted the New Building Application to DEM on April 17, 2000. DEM returned the New Building Application to the Respondent as unacceptable on April 19, 2000 for the following reason:
    - (i) Failure to provide 3-foot separation from the bottom of the leachfield to the groundwater table.
  - (c) After a third submittal, DEM approved the New Building Application on April 24, 2000 (the "Permit").
  - (d) DEM conducted a compliance inspection on the property on April 24, 2001. The inspection revealed that the driveway associated with the proposed dwelling and ISDS was within jurisdictional wetlands. An ISDS application (#9512-1833) for verification of groundwater depth submitted by another designer and approved by DEM on May 22, 1995 indicated that there were wetlands on the property (the "Groundwater Depth Application"). The New Building Application submitted by the Respondent referenced the Groundwater Depth Application but stated that the ISDS was > 200-feet from any jurisdictional wetland. The design plans showed the proposed dwelling and driveway but neglected to show the freshwater wetlands on the property.
  - (e) DEM issued a Notice of Intent to Suspend the Permit on May 16, 2001 to the owners of the property.
- (4)(a) On or about March 10, 2000 the Respondent submitted to DEM an ISDS application (# 9830-1300) for new building construction for property located on Central Pike, in the town of Scituate, Plat 47, Lot 10-1 (the "New Building Application"). The New Building Application was submitted by the Respondent under Designer License #D2061. DEM returned the New Building Application to the Respondent as unacceptable on April 24, 2000 for the following reasons:
- (i) Failure to submit a wetland determination application as advised by DEM on an ISDS application (#9830-1300) for verification of groundwater depth (the "Groundwater Depth Application"). The Groundwater Depth Application was submitted by the Respondent and approved by DEM on April 23, 1998.
  - (ii) Failure to provide design plans with accurate scales; and
  - (iii) Failure to maintain >100-foot separation distance between the ISDS and a private well.
- (b) The Respondent resubmitted the New Building Application to DEM on May 4, 2000. The Respondent stated that the ISDS was > 200-feet from any jurisdictional wetland. DEM approved the New Building Application on May 4, 2000 (the "Permit").
  - (c) DEM conducted a compliance inspection on the property on April 24, 2001. The inspection revealed that the driveway associated with the proposed dwelling and

ISDS was within jurisdictional wetlands. The design plans showed the proposed dwelling and driveway but neglected to show the freshwater wetlands on the property.

- (d) DEM issued a Notice of Intent to Suspend the Permit on May 16, 2001 to the owners of the property.
- (5)(a) On or about June 7, 2000 the Respondent submitted a completed site evaluation form in support of an ISDS application (# 0030-1501) for property located on Chopmist Hill Road, in the town of Scituate, Plat 47, Lot 2 (the "Site Evaluation Form"). The Site Evaluation Form was submitted by the Respondent under Designer License #D4002. The Site Evaluation Form was approved by DEM on June 7, 2000. On July 27, 2000 the Respondent submitted to DEM an ISDS application (#0030-1501) for new building construction (the "New Building Application"). The New Building Application was submitted by the Respondent under Designer License #D3057. DEM returned the New Building Application to the Respondent as unacceptable on September 1, 2000 for the following reasons:
  - (i) Failure to provide design plans for entire ISDS;
  - (ii) Failure to provide head curves and pump calculations;
  - (iii) Failure to maintain >4 foot-separation distance between the bottom of the leachfield and groundwater table; and
  - (iv) Failure to provide a completed Site Evaluation Form.
- (b) The Respondent resubmitted the New Building Application to DEM on September 13, 2000. DEM approved the New Building Application on September 19, 2000 (the "Permit").
- (c) DEM conducted a compliance inspection on the property on April 24, 2001. The inspection revealed the following:
  - (i) The ISDS was within 200 feet of jurisdictional wetlands and the driveway associated with the proposed dwelling was within jurisdictional wetlands; and
  - (ii) The utility pole #35 that was used as the benchmark for the New Building Application was not shown in the correct location on the design plans.
- (d) The Site Evaluation Form and the New Building Application stated that the ISDS was > 200 feet from any jurisdictional wetland. The design plans showed the proposed dwelling and driveway but neglected to show the freshwater wetlands on the property.
- (e) DEM issued a Notice of Intent to Suspend the Permit on May 16, 2001 to the owners of the property.

- (f) DEM received a written complaint dated March 13, 2002 from John and Jennifer Patrie (the "complainants") regarding the work performed by the Respondent. The complainants provided information to DEM that revealed the following:
  - (i) The Respondent failed to provide accurate information on the New Building Application submitted on July 27, 2000 for the lot size. The New Building Application stated that Plat 47, Lot 2 was 5 acres. The actual lot size at that time was 47 acres;
  - (ii) The Respondent failed to obtain the signature of the proper owner. The Respondent advised John Patrie to sign the New Building Application as the owner of the property. The Respondent was aware that the owners of the property at that time were Kathy and Ray Wall; and
  - (iii) The Respondent failed to design the ISDS so that the ISDS was entirely on Plat 47, Lot 2. The Respondent depicted the lot boundary incorrectly.
  
- (6)(a) On or about November 30, 2000 the Respondent submitted a completed site evaluation form in support of an ISDS application (# 0012-2746) for property located on Balcom Road, in the town of Foster, Plat 11, Lot 13 (the "Site Evaluation Form"). The Site Evaluation Form was submitted by the Respondent under Designer License #D4002. The Site Evaluation Form was approved by DEM on December 8, 2000. On December 21, 2000 the Respondent submitted to DEM an ISDS application (#0012-2746) for an alteration to an existing septic system (the "Alteration Application"). The Alteration Application was submitted by the Respondent under Designer License #D3057. DEM returned the Alteration Application to the Respondent as unacceptable on January 29, 2001 for the following reasons:
  - (i) Failure to accurately identify the property as being within a critical resource area, namely the Scituate Reservoir Watershed;
  - (ii) Failure to maintain >4 foot-separation distance between the bottom of the leachfield and groundwater table;
  - (iii) Failure to provide total area of leachfield;
  - (iv) Failure to show distances to property lines;
  - (v) Failure to provide floatation calculations for septic tank;
  - (vi) Failure to provide a pretreatment system; and
  - (vii) Revision needed to design plans to remove disclaimer note.
  
- (b) The Respondent resubmitted the Alteration Application to DEM on February 9, 2001. DEM returned the Alteration Application to the Respondent as unacceptable on March 6, 2001 for the following reasons:

- (i) Question on the purpose of a path located off the driveway that is shown on the design plans;
  - (ii) Failure to show existing topography beyond the proposed fill area;
  - (iii) Failure to show the location to the nearest freshwater wetland on the property;
  - (iv) Failure to include a note on the design plans that the property is located within a critical resource area, namely the Scituate Reservoir Watershed; and
  - (v) Recommendation to include a pretreatment system for pathogens and nitrogen.
- (c) The Respondent resubmitted the Alteration Application to DEM on March 15, 2001. The Respondent stated that he reviewed the property and determined that a freshwater wetland was located within 185 feet of the ISDS. The Site Evaluation Form and the two Alteration Applications previously submitted by the Respondent to DEM stated that no freshwater wetlands were present within 200 feet of the ISDS or test hole. DEM returned the Alteration Application to the Respondent as unacceptable on March 28, 2001 for the following reasons:
- (i) Requirement for submission of biologist report of freshwater wetlands on the property; and
  - (ii) Failure to provide information on the hydraulic connection of the freshwater wetlands to the public water supply.
- (d) On or about June 4, 2001 the Respondent submitted a completed site evaluation form in support of the Alteration Application (the "2<sup>nd</sup> Site Evaluation Form"). The 2<sup>nd</sup> Site Evaluation Form was submitted by the Respondent under Designer License #D4002. The 2<sup>nd</sup> Site Evaluation Form was approved by DEM on July 11, 2001. The Respondent resubmitted the Alteration Application to DEM on July 18, 2001. The Respondent relocated the ISDS so that it was outside the 200 foot Scituate Reservoir Watershed area. DEM approved the Alteration Application on August 10, 2001.
- (7)(a) On January 10, 2001 the Respondent submitted to DEM an ISDS application (#0112-0102) for new building construction for property located on Burgess Road, in the town of Foster, Plat 13, Lot 12A (the "New Building Application"). The New Building Application was submitted by the Respondent under Designer License #D3057. DEM returned the New Building Application to the Respondent as unacceptable on January 25, 2001 for the following reasons:
- (i) Failure to provide information on subdivision of the property;
  - (ii) Failure to provide copy of plat map with recorded owners;
  - (iii) Question as to whether property has been subdivided;

- (iv) Failure to show exact property lines with dimensions;
  - (v) Failure to show distances to freshwater wetlands;
  - (vi) Failure to complete Class IV evaluation form;
  - (vii) Failure to submit previous ISDS application (#0112-0102) for the property;  
and
  - (viii) Revision needed to design plans to remove disclaimer note.
- (b) The Respondent resubmitted the New Building Application to DEM on March 13, 2001. The Respondent also submitted a completed Site Evaluation Form and a Variance Request Form in support of the New Building Application. The Respondent stated that freshwater wetlands are located within 200 feet of the ISDS and the site is within the watershed of the Scituate Reservoir. The New Building Application previously submitted by the Respondent to DEM stated that no freshwater wetlands were present within 200 feet of the ISDS and failed to state that the site is within the watershed of the Scituate Reservoir. DEM returned the New Building Application to the Respondent as unacceptable on June 6, 2001 for the following reasons:
- (i) Requirement for a freshwater wetlands permit; and
  - (ii) Requirement to provide plan of entire site with all wetland impacts shown.
- (c) The Respondent resubmitted the New Building Application to DEM on June 21, 2001. The Respondent also submitted a Freshwater Wetland Permit and Plan approved by DEM on April 10, 2001 in support of the New Building Application (the "Freshwater Wetland Approval"). DEM returned the New Building Application to the Respondent as unacceptable on August 22, 2001 for the following reasons:
- (i) Property lines depicted on the design plans submitted with the New Building Application are not in agreement with the Freshwater Wetland Approval; and
  - (ii) Requirement to provide a detailed plan of the ISDS showing all wetlands and contours.
- (d) The Respondent resubmitted the New Building Application to DEM on September 20, 2001. DEM returned the New Building Application to the Respondent as unacceptable on October 18, 2001 for the following reason:
- (i) Requirement to notify all property owners within 200 feet of the ISDS including the building official and the Water Supply Board.



- (e) The Respondent resubmitted the New Building Application to DEM on November 7, 2001. DEM returned the New Building Application to the Respondent as unacceptable on November 29, 2001 for the following reason:
    - (i) Requirement to provide a copy of the latest deed for the locus lot and any previous deeds for the last 3 years.
  - (f) The Respondent resubmitted the New Building Application to DEM on April 24, 2002. The New Building Application is pending review by DEM.
- (8)(a) On February 27, 2001 the Respondent submitted to DEM an ISDS application (#0012-2071) for new building construction for property located on Kennedy Road, in the town of Foster, Plat 4, Lot 15 (the "New Building Application"). The New Building Application was submitted by the Respondent under Designer License #D3057. The Respondent also submitted a completed Site Evaluation Form and a Variance Request Form in support of the New Building Application. DEM approved the New Building Application on March 16, 2001 (the "Permit").
- (b) On April 11, 2001 DEM received a written complaint from Robert Crispi, the owner of an abutting property (the "complainant"). The complainant stated that the freshwater wetlands were incorrectly shown on the design plans for the New Building Application. The complainant provided DEM with a report prepared by the complainant's consultant, Natural Resource Services, Inc., which indicated that the existing flagging does not represent the edge of the freshwater wetland.
  - (c) DEM conducted a compliance inspection on the property on April 24, 2001. The inspection revealed the following:
    - (i) The wetland edge as shown on the design plans for the New Building Application was inaccurate. The actual wetlands were closer to the proposed ISDS than shown on the design plans.
  - (d) The Respondent submitted a revised New Building Application to DEM on May 14, 2001. The Respondent stated that property lines shown on the design plans for the New Building Application previously submitted by the Respondent to DEM were incorrect. The Respondent stated that the design plans were revised to relocate the proposed ISDS approximately 12 feet to the south and 4 feet to the east away from the abutting property.
  - (e) DEM issued a Notice of Intent to Suspend the Permit on May 16, 2001 to the owners of the property.
  - (f) DEM returned the New Building Application to the Respondent as unacceptable on May 30, 2001 for the following reasons:
    - (i) The design plans did not match the survey prepared by the Respondent's land surveyor. The design plans showed a lot size of 212 feet by 190 feet and the survey showed a lot size of 208 feet by 208 feet;

- (ii) Requirement to provide an accurate plan of property (to scale) with all wetland flags, test holes shown properly;
  - (iii) Revision to design plans to show perimeter wetland to be 50 feet wide, not 45 feet wide as shown on the design plans;
  - (iv) Revision to design plans to accurately show wetland limit of disturbance; and
  - (v) Question as to whether the proposed dwelling is 100 feet from the property line.
- (g) The Respondent resubmitted the New Building Application to DEM on June 4, 2001. The New Building Application was approved by DEM on June 11, 2001.
- (9)(a) On March 8, 2001 the Respondent submitted to DEM an ISDS application (#0012-2473) for new building construction for property located on Kennedy Road, in the town of Foster, Plat 4, Lot 16 (the "New Building Application"). The New Building Application was submitted by the Respondent under Designer License #D3057. The Respondent also submitted a completed Site Evaluation Form in support of the New Building Application (the "Site Evaluation Form"). The Site Evaluation Form was submitted by the Respondent under Designer License #D4002. The Site Evaluation Form was approved by DEM on March 30, 2001.
- (b) DEM returned the New Building Application to the Respondent as unacceptable on March 30, 2001 for the following reasons:
- (i) Failure to show all proposed contours on design plans;
  - (ii) Failure to provide a minimum separation distance of 15 feet from the foundation of the building to the alternate leachfield area; and
  - (iii) Requirement to show all freshwater wetlands within 200 feet of the proposed ISDS.
- (c) The Respondent resubmitted the New Building Application to DEM on April 9, 2001. The Respondent stated that freshwater wetlands are located 108 feet from the proposed ISDS. The New Building Application and Site Evaluation Form previously submitted by the Respondent to DEM stated that no freshwater wetlands were present within 200 feet of the ISDS.
- (d) DEM returned the New Building Application to the Respondent as unacceptable on April 30, 2001 for the following reason:
- (i) Failure to show all erosion and sedimentation controls.
- (e) The Respondent resubmitted the New Building Application to DEM on May 7, 2001. The New Building Application was approved by DEM on May 9, 2001.

- (10) Each of the above referenced ISDS applications (collectively, "the ISDS Applications") required that the ISDS originally designed by the Respondent be redesigned to comply with the Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction, and Maintenance of Individual Sewage Disposal Systems (the "ISDS Regulations").
- (11) Findings of DEM's review of 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 May 18, 2001 and reviewed the Respondent's actions regarding the ISDS Applications. The Panel recommended to DEM that the Respondent's License #D3057 and License #D4002 be suspended for a minimum of one (1) year.
- (12) On March 20, 2002 DEM issued to the Respondent a Notice of Intent to Suspend or Revoke the Respondent's License #D3057 and License #D4002 (the "NOI"). The NOI was issued for violating the provisions of Rhode Island General Laws, Section 5-56.1-1 et seq. and 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 licenses.
- (13) The Respondent received said NOI and requested a preliminary hearing before DEM. The preliminary hearing was held on April 18, 2002. The Respondent provided DEM a letter dated April 15, 2002 concerning the ISDS Applications and additional verbal information on his actions, which the DEM considered.
- (14) The Respondent failed to show cause why DEM should not suspend or revoke the Respondent's License #D3057 and License #D4002.

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 or design of an ISDS.
- (2) ISDS Regulations effective October 1, 1998 (the "ISDS 1998 Regulations"), Section SD 2.01 (b) relating to the requirement that all applications shall be made in conformance with all provisions of the regulations.

- (3) ISDS 1998 Regulations, Section SD 2.02B (b) relating to the requirement to submit a freshwater wetland application for an ISDS design involving freshwater wetlands.
- (4) ISDS 1998 Regulations, Section SD 2.02B (c) relating to the requirement to submit basic design data with an ISDS application.
- (5) ISDS 1998 Regulations, Section SD 2.02B (d)(6) relating to the requirement to design an ISDS with a minimum separation distance from groundwater.
- (6) ISDS 1998 Regulations, Section SD 2.02B (f) relating to the requirement that the applicant provide all information required by the regulations in a complete and accurate manner.
- (7) ISDS 1998 Regulations, Section SD 2.09 relating to the requirement that an ISDS be located within the property boundary upon which the building or dwelling is located.
- (8) ISDS 1998 Regulations, Section SD 2.16 (a) relating to the requirement to obtain a freshwater wetlands permit or determination that the Freshwater Wetland Act does not apply to the proposed construction or new installation of an ISDS and related building or site improvements.
- (9) ISDS 1998 Regulations, Section SD 3.05 relating to the requirement to design an ISDS in accordance with minimum separation distance from a private well.
- (10) ISDS 1998 Regulations, Section SD 3.05 relating to the requirement to design an ISDS in accordance with minimum separation distance from a dwelling.
- (11) ISDS 1998 Regulations, Section SD 3.05 relating to the requirement to design an ISDS in accordance with minimum separation distance from a property line.
- (12) ISDS 1998 Regulations, Section SD 8.02 relating to the requirement to submit design data for any pumps proposed for an ISDS design.
- (13) ISDS 1998 Regulations, Section SD 10.02 relating to the requirement to design an ISDS with a minimum separation distance from groundwater.
- (14) ISDS 1998 Regulations, Section SD 11.02 relating to the requirement to design an ISDS with a proper grade of distribution lines.
- (15) ISDS 1998 Regulations, Section SD 11.06 (a)(1) relating to the requirement to design an ISDS with a minimum leachfield strip distance.
- (16) ISDS 1998 Regulations, Section SD 19.00 (d) relating to the requirement that the applicant certify the location of an ISDS with respect to any critical area.

- (17) ISDS 1998 Regulations, Section SD 19.03 relating to the requirement to design an ISDS with a minimum separation distance of 4 feet from groundwater.
- (18) ISDS 1998 Regulations, Section SD 27.00 (a) relating to the requirement to design an ISDS in accordance with the regulations.
- (19) ISDS Regulations effective March 8, 2000 (the "ISDS 2000 Regulations"), Section SD 2.01 (b) relating to the requirement that all applications shall be made in conformance with all provisions of the regulations.
- (20) ISDS 2000 Regulations, Section SD 2.02 (b) relating to the requirement to submit a freshwater wetland application for an ISDS design involving freshwater wetlands.
- (21) ISDS 2000 Regulations, Section SD 2.02 (c) relating to the requirement to submit basic design data with an ISDS application.
- (22) ISDS 2000 Regulations, Section SD 2.02 (d)(1) relating to the requirement to show all existing and proposed grades in the vicinity of the ISDS.
- (23) ISDS 2000 Regulations, Section SD 2.02 (d)(6) relating to the requirement to design an ISDS with a minimum separation distance from groundwater.
- (24) ISDS 2000 Regulations, Section SD 2.02 (d)(10) relating to the requirement to show the location of all wetlands within 200 feet of a proposed ISDS and/or alternate area.
- (25) ISDS 2000 Regulations, Section SD 2.02 (d)(11) relating to the requirement to show the location of an ISDS relative to any watershed of a public water supply or critical resource area.
- (26) ISDS 2000 Regulations, Section SD 2.02 (f) relating to the requirement that the applicant provide all information required by the regulations in a complete and accurate manner.
- (27) ISDS 2000 Regulations, Section SD 2.16 (a) relating to the requirement to obtain a freshwater wetlands permit or determination that the Freshwater Wetland Act does not apply to the proposed construction or new installation of an ISDS and related building or site improvements.
- (28) ISDS 2000 Regulations, Section SD 17.02 (b) relating to the requirement to submit pertinent information to support the maximum elevation of the ground water table in the location of the proposed ISDS.
- (29) ISDS 2000 Regulations, Section SD 26.00 (a) relating to the requirement that site evaluations provide information that will determine the acceptable type of ISDS for a site.

- (30) ISDS 2000 Regulations, Section SD 26.00 (b)(5) relating to the requirement that site evaluations identify the presence of any wetlands within 200 feet of an ISDS.
- (31) ISDS 2000 Regulations, Section SD 26.00 (b)(7) relating to the requirement that site evaluations identify if the site is within the watershed of a public drinking water reservoir or other critical area.

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 #D3057 and Designer License #D4002 issued to Robert C. Schultz be suspended for a period of eighteen (18) months, effective thirty (30) days from the receipt of this Notice.

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:

**Seven Thousand Dollars (\$ 7000.00)**

- (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 Notice of Violation (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, 3<sup>RD</sup> Floor  
Providence, RI 02908-5767
- (3) A copy of each request for hearing must also be forwarded to:
- Timothy Pavilonis, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> 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 Notice 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 Notice 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 Notice may subject each respondent to additional civil and/or criminal penalties.
- (7) This Notice 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 Timothy Pavilonis, 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

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

Date:

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 2002  
the within Notice of Violation was forwarded to:

Robert C. Schultz  
Schultz Engineering & Construction  
97 Foster Center Road  
Foster, RI 02825

by Certified Mail, return receipt requested.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WATER COMPLIANCE SECTION

File No.: OC&I/ISDS: #D3057 and #D4002

File Name: Robert C. Schultz

<b>GRAVITY OF VIOLATION</b> <small>SEE ATTACHED "PENALTY MATRIX WORKSHEETS."</small>					
<b>VIOLATION No. &amp; CITATION</b>	<b>APPLICATION OF MATRIX</b>		<b>PENALTY CALCULATION</b>		<b>AMOUNT</b>
	<b>Type</b>	<b>Deviation</b>	<b>Penalty from Matrix</b>	<b>Number or Duration of Violations</b>	
C (1)-C (6), C (8)-C (9), C (13)-C (15), C (18)-C (23), C (26)-C (27); Gross negligence, incompetence or misconduct on an ISDS design; Application # 9512-1833	Type I  <i>(\$1000 Max. Penalty)</i>	Major	\$ 1,000	1 application	\$ 1,000
C (1), C (9), C (18)-C (21), C (26)-C (27); Gross negligence, incompetence or misconduct on an ISDS design; Application # 9830-1300	Type I  <i>(\$1000 Max. Penalty)</i>	Major	\$ 1,000	1 application	\$ 1,000
C (1), C (7), C (12)-C (13), C (17)-C (21), C (23)-C (24), C (26)- C (30); Gross negligence, incompetence or misconduct on an ISDS design; Application # 0030-1501	Type I  <i>(\$1000 Max. Penalty)</i>	Major	\$ 1,000	1 application	\$ 1,000

## GRAVITY OF VIOLATION

SEE ATTACHED "PENALTY MATRIX WORKSHEETS."

VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1), C (13), and C (16)-C (31); Gross negligence, incompetence or misconduct on an ISDS design; Application # 0012-2746	Type I <i>(\$1000 Max. Penalty)</i>	Major	\$ 1,000	1 application	\$ 1,000

C (1), C (16), C (18)- C (22), C (24)-C (27); Gross negligence, incompetence or misconduct on an ISDS design; Application # 0012-0102	Type I <i>(\$1000 Max. Penalty)</i>	Major	\$ 1,000	1 application	\$ 1,000
C (1), C (7), C (18)-C (21), C (24), and C (26)-C (27); Gross negligence, incompetence or misconduct on an ISDS design; Application # 0012-2071	Type I <i>(\$1000 Max. Penalty)</i>	Major	\$ 1,000	1 application	\$ 1,000
C (1), C (10), C (18)-C (22), C (24), C (26)-C (27), and C (29)-C (30); Gross negligence, incompetence or misconduct on an ISDS design; Application # 0012-2473	Type I <i>(\$1000 Max. Penalty)</i>	Major	\$ 1,000	1 application	\$ 1,000
<b>SUB-TOTAL</b>					<b>\$7,000</b>

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$7,000.00**

# PENALTY MATRIX WORKSHEET

FILE NO.: OC & I/ISDS #D3057 x-ref Appl.#9512-1833 FILE NAME: Robert C. Schultz

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

VIOLATION NO.: C (1)-C (6), C (8)-C (9), C (13)-C (15), C (18)-C (23), and C (26)-C (27)

TYPE		
<input checked="" type="checkbox"/> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment	<input type="checkbox"/> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment	<input type="checkbox"/> <b>TYPE III</b> <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><b>FACTORS CONSIDERED:</b></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 demonstrated gross negligence, incompetence, and misconduct in designing an ISDS. The Respondent failed to: design proper grades for distribution lines, show accurate scales on plans, maintain proper separation distance from private well, maintain proper leach field strip, maintain proper separation from groundwater, and show freshwater wetlands as required by the regulations.</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 of an ISDS and misrepresented or omitted information concerning the property. Respondent required to resubmit the application plans 2 times prior to approval by DEM. A suspension of the approval was issued after DEM became aware of the presence of freshwater wetlands that were not properly shown on the design plans submitted by the Respondent.</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 has no information that the Respondent has previously failed to comply with the ISDS Regulations prior to the instances specified in the NOV.</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 violations were 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. Respondent has had License #D3057 since January 1, 2000. The Respondent's failure to design the ISDS in a competent and thorough manner resulted in delays in the approval of the application, the issuance of a suspension of the approval by DEM to the owner, and a redesign of the ISDS to comply with the ISDS Regulations. DEM did not receive any complaints regarding the Respondent's actions in the design of the ISDS. Multiple other facts are set forth in the NOV showing numerous problems with noncompliance attributed to this Respondent.</p>		
___ MINOR	_____ MODERATE	___X___ 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 <b>\$1,000</b>	\$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

# PENALTY MATRIX WORKSHEET

FILE NO.: OC & I/ISDS #D3057 x-ref Appl. #9830-1300 FILE NAME: Robert C. Schultz  
 CITATION: Gross negligence, incompetence or misconduct on an ISDS design  
 VIOLATION NO.: C (1), C (9), C (18)-C (21), and C (26)-C (27)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <small>DIRECTLY related to protecting health, safety, welfare or environment</small>	<u>          </u> <b>TYPE II</b> <small>INDIRECTLY related to protecting health, safety, welfare, or environment</small>	<u>          </u> <b>TYPE III</b> <small>INCIDENTAL to protecting health, safety, welfare, or environment</small>
<b>DEVIATION FROM THE STANDARD</b> <small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<b>FACTORS CONSIDERED:</b>		
Taken from Section 10 (a) (2) of the Rules and Regulations for Assessment of Administrative Penalties		
<p>(A) The extent to which the act or failure to act was out of compliance. The Respondent demonstrated gross negligence, incompetence, and misconduct in designing an ISDS. The Respondent failed to: submit a wetlands determination application, show accurate scales on plans, maintain proper separation distance from private well, and show freshwater wetlands as required by the regulations.</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 of an ISDS and misrepresented or omitted information concerning the property. Respondent was required to resubmit the application plan 1 time prior to approval by DEM. A suspension of the approval was issued after DEM became aware of the presence of freshwater wetlands that were not properly shown on the design plans submitted by the Respondent.</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 has no information that the Respondent has previously failed to comply with the ISDS Regulations prior to the instances specified in the NOV.</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 violations were 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. Respondent has had License #D3057 since January 1, 2000. The Respondent's failure to design the ISDS in a competent and thorough manner resulted in delays in the approval of the application, the issuance of a suspension of the approval by DEM to the owner, and a redesign of the ISDS to comply with the ISDS Regulations. DEM received numerous complaints from the owner regarding the Respondent's actions in the design of the ISDS. The owner stated that the delays and suspension of the approval caused financial and emotional hardship. Multiple other facts are set forth in the NOV showing numerous problems with noncompliance attributed to this Respondent</p>		
<u>    </u> MINOR	<u>        </u> MODERATE	<u>    X    </u> 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 <b>\$1000</b>	\$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

**PENALTY MATRIX WORKSHEET**

FILE NO.: OC & I/ISDS #D3057;#D4002 x-ref Appl. #0030-1501 FILE NAME: Robert C. Schultz

CITATION: Gross negligence, incompetence or misconduct on an ISDS design  
 VIOLATION NO.: C (1), C (7), C (12)-C (13), C (17)-C (21), C (23)-C (24), and C (26)-C (30)

<b>TYPE</b>		
<input checked="" type="checkbox"/> <b>TYPE I</b> <small>DIRECTLY related to protecting health, safety, welfare or environment</small>	<input type="checkbox"/> <b>TYPE II</b> <small>INDIRECTLY related to protecting health, safety, welfare, or environment</small>	<input type="checkbox"/> <b>TYPE III</b> <small>INCIDENTAL to protecting health, safety, welfare, or environment</small>
<b>DEVIATION FROM THE STANDARD</b> <small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<b>FACTORS CONSIDERED:</b>		
Taken from Section 10 (a) (2) of the Rules and Regulations for Assessment of Administrative Penalties		
<p>(A) The extent to which the act or failure to act was out of compliance. The Respondent demonstrated gross negligence, incompetence, and misconduct in designing an ISDS. The Respondent failed to: provide design plans for the entire ISDS, provide head curves and pump calculations, maintain proper separation distance from groundwater, provide an evaluation of soils, submit a wetlands determination application, show freshwater wetlands as required by the regulations, accurately show benchmark location on plans, accurately identify lot size, obtain signature of proper owner of property, and design the ISDS entirely on the owners property.</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 of an ISDS and misrepresented or omitted information concerning the property. Respondent was required to resubmit the application plan 1 time prior to approval by DEM. A suspension of the approval was issued after DEM became aware of the presence of freshwater wetlands that were not properly shown on the design plans submitted by the Respondent.</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 has no information that the Respondent has previously failed to comply with the ISDS Regulations prior to the instances specified in the NOV.</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 violations were 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. Respondent has had License #D3057 and License D4002 since January 1, 2000. The Respondent's failure to design the ISDS in a competent and thorough manner resulted in delays in the approval of the application, the issuance of a suspension of the approval by DEM to the owner, and a redesign of the ISDS to comply with the ISDS Regulations. DEM received numerous complaints from the owners regarding the Respondent's actions in the design of the ISDS. The owners stated that the delays and suspension of the approval caused financial and emotional hardship. Multiple other facts are set forth in the NOV showing numerous problems with noncompliance attributed to this Respondent</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 <b>\$1000</b>	\$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

**PENALTY MATRIX WORKSHEET**

FILE NO.: OC & I/ISDS #D3057;#D4002 x-ref Appl. #0012-2746 FILE NAME: Robert C. Schultz  
 CITATION: Gross negligence, incompetence or misconduct on an ISDS design

VIOLATION NO.: C (1), C (13), and C (16)-C (31)

<b>TYPE</b>		
<input checked="" type="checkbox"/> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment	<input type="checkbox"/> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment	<input type="checkbox"/> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment
<b>DEVIATION FROM THE STANDARD</b>		
<b>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</b>		
<p><b><u>FACTORS CONSIDERED:</u></b></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 demonstrated gross negligence, incompetence, and misconduct in designing an ISDS. The Respondent failed to: accurately identify the property as being in a critical resource area, maintain proper separation distance from groundwater, provide design plans for the entire ISDS, show distance to property lines, provide floatation calculations for septic tank, show existing grades on plans, submit a wetlands determination application, and show freshwater wetlands as required by the regulations.</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 of an ISDS and misrepresented or omitted information concerning the property. Respondent required to resubmit the application plan 3 times 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 has no information that the Respondent has previously failed to comply with the ISDS Regulations prior to the instances specified in the NOV.</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 violations were 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. Respondent has had License #D3057 and License #D4002 since January 1, 2000. The Respondent's failure to design the ISDS in a competent and thorough manner resulted in delays in the approval of the application and a redesign of the ISDS to comply with the ISDS Regulations. DEM did not receive any complaints regarding the Respondent's actions in the design of the ISDS. Multiple other facts are set forth in the NOV showing numerous problems with noncompliance attributed to this Respondent</p>		
___ MINOR	___ MODERATE	___ X ___ 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 <b>\$1000</b>	\$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

**PENALTY MATRIX WORKSHEET**

FILE NO.: OC & I/ISDS #D3057 x-ref Appl. #0012-0102 FILE NAME: Robert C. Schultz

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

VIOLATION NO.: C (1), C (16), C (18)- C (22), and C (24)-C (27)

<b>TYPE</b>		
<input checked="" type="checkbox"/> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment	<input type="checkbox"/> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment	<input type="checkbox"/> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment
<b>DEVIATION FROM THE STANDARD</b>		
<b>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</b>		
<p><b><u>FACTORS CONSIDERED:</u></b></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 demonstrated gross negligence, incompetence, and misconduct in designing an ISDS. The Respondent failed to: provide information on subdivision of property and plat map with recorded owners, show exact property lines, submit a wetlands determination application, show freshwater wetlands on the property within 200 feet of the ISDS, accurately identify the property as being in a critical resource area, and show existing grades on plans.</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 of an ISDS and misrepresented or omitted information concerning the property. Respondent required to resubmit the application plan 5 times.</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 has no information that the Respondent has previously failed to comply with the ISDS Regulations prior to the instances specified in the NOV.</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 violations were 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. Respondent has had License #D3057 since January 1, 2000. The Respondent's failure to design the ISDS in a competent and thorough manner resulted in delays in the review of the application and a redesign of the ISDS to comply with the ISDS Regulations. DEM did not receive any complaints regarding the Respondents actions in the design of the ISDS. Multiple other facts are set forth in the NOV showing numerous problems with noncompliance attributed to this Respondent.</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 <b>\$1000</b>	\$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

**PENALTY MATRIX WORKSHEET**

FILE NO.: OC & I/ISDS #D3057 x-ref Appl. #0012-2071 FILE NAME: Robert C. Schultz

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

VIOLATION NO.: C (1), C (7), C (18)-C (21), C (24), and C (26)-C (27)



<b>TYPE</b>		
<input checked="" type="checkbox"/> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment	<input type="checkbox"/> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment	<input type="checkbox"/> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment
<b>DEVIATION FROM THE STANDARD</b>		
<b>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</b>		
<p><b><u>FACTORS CONSIDERED:</u></b></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 demonstrated gross negligence, incompetence, and misconduct in designing an ISDS. The Respondent failed to: accurately show freshwater wetlands on the plans and accurately show property lines on the plans.</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 of an ISDS and misrepresented or omitted information concerning the property. A suspension of the approval was issued after DEM became aware that the freshwater wetlands and property lines were not accurately shown on the plans. The Respondent was required to resubmit the revised application plan (which was submitted after DEM suspended the approval) 1 time.</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 has no information that the Respondent has previously failed to comply with the ISDS Regulations prior to the instances specified in the NOV.</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 violations were 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. Respondent has had License #D3057 since January 1, 2000. The Respondent's failure to design the ISDS in a competent and thorough manner resulted in the suspension of the approval, delays in the review of the resubmitted application following suspension of the approval, and a redesign of the ISDS to comply with the ISDS Regulations. DEM received a complaint from the abutting property owner regarding the Respondent's actions in the design of the ISDS. The property owner stated that he had to retain independent consultants at his own expense to demonstrate that the plans submitted by the Respondent were inaccurate. Multiple other facts are set forth in the NOV showing numerous problems with noncompliance attributed to this Respondent</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 <b>\$1000</b>	\$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

***PENALTY MATRIX WORKSHEET***

*FILE NO.: OC & I/ISDS #D3057;#D4002 x-ref Appl. #0012-2473 FILE NAME: Robert C. Schultz  
 CITATION: Gross negligence, incompetence or misconduct on an ISDS design  
 VIOLATION NO.: C (1), C (10), C (18)-C (22), C (24), C (26)-C (27), and C (29)-C (30)*

<b>TYPE</b>		
<input checked="" type="checkbox"/> <b>TYPE I</b>	<input type="checkbox"/> <b>TYPE II</b>	<input type="checkbox"/> <b>TYPE III</b>

<u>DIRECTLY</u> related to protecting health, safety, welfare or environment	<u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment	<u>INCIDENTAL</u> to protecting health, safety, welfare, or environment
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**DEVIATION FROM THE STANDARD**  
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

**FACTORS CONSIDERED:**

Taken from Section 10 (a) (2) of the Rules and Regulations for Assessment of Administrative Penalties

- (A) The extent to which the act or failure to act was out of compliance. The Respondent demonstrated gross negligence, incompetence, and misconduct in designing an ISDS. The Respondent failed to: show all proposed contours on the plans, provide a minimum separation distance from a dwelling, show freshwater wetlands on the plans, and show all erosion/sedimentation controls.
- (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 of an ISDS and misrepresented or omitted information concerning the property. The Respondent was required to resubmit the application plan 2 times prior to approval by DEM.
- (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 has no information that the Respondent has previously failed to comply with the ISDS Regulations prior to the instances specified in the NOV.
- (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 violations were 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.
- (J) Any other factors that may be relevant in determining the amount of a penalty. Respondent has had License #D3057 and #D4002 since January 1, 2000. The Respondent's failure to design the ISDS in a competent and thorough manner resulted in delays in the review of the application and a redesign of the ISDS to comply with the ISDS Regulations. DEM did not receive any complaints regarding the Respondent's actions in the design of the ISDS. Multiple other facts are set forth in the NOV showing numerous problems with noncompliance attributed to this Respondent

___ MINOR	_____ MODERATE	___ X ___ MAJOR
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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 <b>\$1000</b>	\$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