

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: C. Geoffery Matteson
David Petrucci dba Petrucci Construction**

**FILE Nos.: OCI-WP-19-12,
FWW 17-0080, RIR101570,
and STW17-071**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

DEM issued a permit to C. Geoffery Matteson (“Matteson”) to construct residential condominium units, roadways, utilities and stormwater treatment structures at the property that is the subject of this Notice of Violation (“NOV”). DEM inspected the property and documented permit violations that resulted in the issuance of a Cease and Desist Order (“C&D”) to David Petrucci (“Petrucci”), the general contractor, on February 8, 2019. The C&D required that all construction activities cease until the permit violations were corrected. DEM’s inspector spoke with Petrucci while onsite regarding the actions needed to bring the property into compliance with the permit. Follow up inspections by DEM documented additional permit violations, which are the basis of the NOV.

C. Facts

- (1) The subject properties are located at 175 Greenbush Road, Assessor’s Plat 12, Lot 20 (“Lot 20”) and 179 Greenbush Road, Assessor’s Plat 12, Lot 234 (“Lot 234”), in the Town of West Warwick, Rhode Island.
- (2) Matteson Ridge LP owns Lot 20.
- (3) Ronald E. Salvas and Rena Salvas own Lot 234.
- (4) On July 25, 2017, DEM issued an *Insignificant Alteration Permit* and a *General Permit for Stormwater Discharge Associated with Construction Activity* (collectively, the “Permit”) to Matteson to construct 32 residential condominium units, roadways, utilities and stormwater treatment structures (the “Project”) on Lot 20.

- (5) Petrucci is the general contractor and operator for the Project dba Petrucci Construction.
- (6) The Permit requires Matteson and Petrucci to:
 - (a) install soil erosion and sedimentation controls (“SESCs”) in accordance with a document titled *Soil Erosion and Sediment Control Plan for Matteson Ridge Condominiums, 175 Greenbush Road, West Warwick, Rhode Island 02893, Assessor’s Plat 12, Lot Number 20, March 2017* (the “SESC Plan”) and engineered plans titled *Matteson Ridge Condos Location A.P. 12 Lot 20 175 Greenbush Road West Warwick, Rhode Island 02893 March, 2017*, prepared by Boyer Associates (the “Approved Plans”);
 - (b) regularly conduct SESC inspections, maintain and repair all SESC as necessary to remain in effective operating condition and to prevent harm to adjacent wetlands; and
 - (c) keep all records of SESC inspections, maintenance and repair on site during the extent of coverage of the Permit.
- (7) On February 7, 2019, DEM inspected Lot 20 (the “February 7TH Inspection”) and spoke with Petrucci. Petrucci informed DEM’s inspector that no inspections of the SESC were being conducted and no records of any inspections had been maintained.
- (8) During the February 7TH Inspection, DEM’s inspector observed that SESC were not installed at the following locations on Lot 20 as required by the SESC Plan and Approved Plans:
 - (a) area of the four corners of the lot and intermittently along the limits of disturbance;
 - (b) area identified as future Lot 20.1 on the Approved Plans;
 - (c) at the construction entrance;
 - (d) area along Greenbush Road;
 - (e) disturbed land in Phase 2 area;
 - (f) surrounding a material stockpile in the area of proposed condominium unit A-12;
 - (g) infiltration basin (no. BMP5c); and
 - (h) surrounding a material stockpile in, or near, Phase 2 area.
- (9) The February 7TH Inspection also revealed a failure to maintain and repair the SESC that were installed as follows:
 - (a) near the entrance to Lot 20 from Greenbush Road. Silt fence was completely overrun with sediment and gravel;

- (b) in the area of the proposed underground detention system along the limits of disturbance adjacent to the Perimeter Wetland associated with the freshwater wetland delineated by the A series wetland flags on the Approved Plans (the “A-Series Wetlands”). Silt fence was completely overrun with sediment, gravel and rocks; and
 - (c) in the area of proposed condominium unit, A-14. Sediment is evident beyond the silt fence.
- (10) The February 7TH Inspection further revealed that freshwater wetlands were impacted by sediment laden stormwater discharges from Lot 20 as evidenced by:
 - (a) observation of trenches that were dug on the east and west sides of the freshwater wetlands delineated by the B series wetland flags on the Approved Plans (the “B-Series Wetlands”) enhancing flow into and from the wetlands;
 - (b) observation and photographs of a heavy swath of eroded earthen materials leading up to the B-Series Wetlands and sediment laden water within the B-Series Wetlands;
 - (c) observation and photograph of the discharge of sediment laden water to an unnamed pond located on Lot 234 (the “Pond”) in the area of proposed condominium unit, A-14; and
 - (d) observation and photographs showing sediment laden water in the A-Series Wetlands in the vicinity of wetland flag A188.
- (11) On February 8, 2019, DEM issued an *Order to Cease and Desist* (“C&D”) to Petrucci requiring that all construction activities cease until the property is brought into full compliance with the Permit. Petrucci signed the C&D and agreed to its terms.
- (12) On February 13, 2019, Petrucci met with DEM’s inspector at Lot 20 and presented a plan to bring the property into compliance with the Permit. The plan included construction of a temporary infiltration basin and temporary sediment traps at the construction entrance. Petrucci also proposed the installation of all required SESC’s, moving the large earthen material stockpile away from the limits of disturbance, stabilizing all exposed areas, and restoring the B-Series Wetlands when the surface water level dropped sufficiently.
- (13) On February 15, 2019, DEM inspected Lot 20. The inspection revealed that a temporary infiltration basin and associated SESC’s were installed at the construction entrance but were ineffective, resulting in an additional discharge of sediment laden stormwater to the B-Series Wetlands.
- (14) On June 14, 2019, DEM inspected Lot 20 (the “June 14TH Inspection”) and determined the following:
 - (a) inadequate SESC’s were installed in the Phase 4 area where land had been recently cleared, particularly the southern side;

- (b) SESCOs were not maintained as required by the Permit as evidenced by observation and photographs showing sediment build up against the silt fencing and breaching of the silt fencing by earthen materials;
 - (c) sediment laden water from Lot 20 as evidenced by observation and photographs was entering the B-Series Wetlands; and
 - (d) restoration of the B-Series Wetlands had not occurred as evidenced by observation and a photograph showing sediment in the wetlands.
- (15) During the June 14TH Inspection, DEM requested that Petrucci submit the last SESCO inspection records to DEM by e-mail as soon as possible.
 - (16) The A-Series Wetlands, the B-Series Wetlands and the Pond are within the South Branch Pawtuxet River Subwatershed.
 - (17) The South Branch Pawtuxet River is a Class B1 water pursuant to Part 1.25(J)(3) of the *Water Quality Regulations (250-RICR-150-05-1)* [effective August 19, 2018 to Current] (the “Water Quality Regulations”).
 - (18) The A-Series Wetlands, the B-Series Wetlands and the Pond are Class B waters pursuant to Part 1.9(E)(3) of the Water Quality Regulations.
 - (19) The designated uses for Class B waters include fish and wildlife habitat and shall have good aesthetic value, pursuant to Part 1.9(B)(3) of the Water Quality Regulations.
 - (20) Class B waters shall, at a minimum, be free of pollutants in concentrations or combinations or from anthropogenic activities subject to these regulations that adversely affect the physical integrity of the habitat pursuant to Part 1.10(B)(1)(b) of the Water Quality Regulations.
 - (21) Class B waters shall be free of pollutants in concentrations or combinations that:
 - (a) Settle to form deposits that are unsightly to such a degree as to create a nuisance, or interfere with the existing or designated uses pursuant to Part 1.10(B)(2)(a) of the Water Quality Regulations; and
 - (b) Produce change the color of the receiving water in such concentrations that adversely affect its existing or designated uses pursuant to Part 1.10(B)(2)(c) of the Water Quality Regulations.
 - (22) The stormwater runoff from Lot 20, containing sediment, has adversely impacted the designated uses of the A-Series Wetlands and B-Series Wetlands for fish and wildlife habitat and the aesthetic value of the wetlands.
 - (23) Respondents do not have authorization to discharge pollutants from Lot 20 in concentrations that adversely affect the A-Series Wetlands and B-Series Wetlands or the designated uses of these waters.

- (24) As of the date of the NOV, DEM has not received any SESC inspection records.
- (25) As of the date of the NOV, DEM has not received any documents showing that the SESCOs have been properly installed and maintained in accordance with the Permit.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **R.I. Gen. Laws Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) **Water Quality Regulations**
 - (a) **Part 1.10(B)(1)(b)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that adversely affect the physical integrity of the habitat.
 - (b) **Part 1.10(B)(2)(c)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that produce odor or change the color of the receiving water to such a degree as to interfere with its designated uses.
 - (c) **Part 1.11(A)** — prohibiting the discharge of pollutants into any waters of the State or performing any activities alone or in combination which DEM determines will likely result in the violation of any State water quality criterion or interfere with one or more of the existing or designated uses assigned to the receiving waters or to downstream waters. In addition, Best Management Practices, as determined by DEM, shall be used to control erosion, sedimentation and runoff.
 - (d) **Part 1.13(B)** – prohibiting the discharge of pollutants into the waters of the State except as in compliance with the provisions of R.I. Gen. Laws Chapter 46-12, or other applicable chapters, of the Rhode Island General Laws or these regulations, and pursuant to the terms and conditions of an approval issued by DEM thereunder.
 - (e) **Part 1.15(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to waters of the State.

- (3) ***Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1) [effective October 7, 2018 to Current] (the “RIPDES Regulations”)***
 - (a) **Part 1.14(B)(1)** – requiring the permittee to comply with all conditions of the permit.
 - (b) **Part 1.14(E)** – requiring the permittee to take all reasonable steps to minimize or prevent any discharge in violation of the permit.
 - (c) **Part 1.14(F)** – requiring the permittee to at all times maintain in good working order and operate as efficiently as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit.
- (4) ***Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1) [effective July 16, 2014 to Current] (the “Freshwater Wetlands Regulations”), Part 1.9(D)(2)*** – requiring compliance with all terms of a permit issued by DEM.

E. Order

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

- (1) **Within 5 days of receipt of the NOV**, properly install all SESC's in accordance with the SESC Plan, the Approved Plans and the Permit.
- (2) **At all times and throughout the life of the project**, inspect, maintain, repair, replace, supplement, or modify all SESC's on Lot 20 as necessary to minimize soil erosion and to prevent sediment from being deposited in any wetlands not subject to disturbance under the Permit.
- (3) **At all times and throughout the life of the project**, maintain all SESC inspection, maintenance and repair records on site and available for DEM review.
- (4) **Within 60 days of receipt of the NOV**, submit a plan to DEM prepared by a qualified wetland scientist to assess the impacts of sedimentation from Lot 20 to the A-Series Wetlands, the B-Series Wetlands and the Pond (the “Wetland Assessment Plan”). The Wetland Assessment Plan must describe the method/s that will be used to estimate the extent of deposition of non-native soil including depth, type and area impacted and include a schedule for completion of the work.
- (5) **Within 30 days of DEM’s approval of the Wetland Assessment Plan**, initiate the work in the plan and complete all work in accordance with the approved schedule.

- (6) **Within 30 days of completion of the work in subsection E (5) above**, submit a report of the findings to DEM (the “Wetland Assessment Report”). DEM will review the Wetland Assessment Report and notify Respondents in writing whether Respondents need to prepare a restoration plan (the “Wetland Restoration Plan”). The Wetland Restoration Plan shall describe the method/s that will be used to remove non-native soil from the freshwater wetlands and provide a schedule for completion of the work. Within 60 days of notification by DEM that the Wetland Restoration Plan is necessary, Respondents shall submit the Wetland Restoration Plan to DEM.
- (7) The plans and reports required in subsections E (4) and E (6) above shall be subject to DEM’s review and approval. Upon completing its review, DEM shall provide written notification to Respondents either granting approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies, Respondents shall submit to DEM a modified report or additional information to correct the deficiencies.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED against each named respondent:

\$28,500

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier’s check or money order made payable to the “General Treasury - Water & Air Protection Program” and shall be forwarded to DEM’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if DEM determines that reasonable efforts have been made to comply promptly with the NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
 - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, Room 350
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of the *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmit, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).

- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the Town of West Warwick, Rhode Island wherein Lot 20 is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapters 34-13 and 46-12-9(c), as amended.
- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Christina Hoefsmit of DEM's Office of Legal Services at (401) 222-6607 or at Christina.hoefsmit@dem.ri.gov. All other inquiries should be directed to Patrick Hogan of DEM's Office of Compliance and Inspection at (401) 222-1360 extension 7119 or at patrick.hogan@dem.ri.gov.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR:

By: _____
David E. Chopy, Administrator
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

C. Geoffery Matteson
C/o John J. Kupa, Jr., Esq.
20 Oakdale Road
North Kingstown, RI 02852

David Petrucci dba Petrucci Construction
29 Steere Road
Greenville, RI 02828

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File Nos.: OCI-WP-19-12 FWW 17-0080, RIR101570 and STW17-071
 Respondents: C. Geoffery Matteson and David Petrucci dba Petrucci Construction

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1), D (2), D (3) and D (4) – Failure to install and maintain SESCOs in accordance with the Permit resulting in adverse impacts to wetlands	Type I (\$25,000 Max. Penalty) *	Moderate	\$12,500	2 violations	\$25,000
D (1), D (2)(d) and D (3) – Failure to perform inspections in accordance with the Permit	Type I (\$25,000 Max. Penalty) *	Minor	\$2,500	1 violation	\$2,500
D (1), D (3) and D (4) – Failure to maintain SESC inspection records in accordance with the Permit	Type III (\$6,250 Max. Penalty) *	Minor	\$1,000	1 violation	\$1,000
SUB-TOTAL					\$28,500

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

ADMINISTRATIVE PENALTY SUMMARY (continued)

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$28,500

PENALTY MATRIX WORKSHEET

CITATION: Failure to install and maintain SESC's in accordance with the Permit resulting in adverse impacts to wetlands

VIOLATION NOs.: D (1), D (2), D (3) and D (4)

TYPE		
<u> </u> X <u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
FACTORS CONSIDERED:		
<p>Taken from Part 1.10(A)(1)(b) of the <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <p>(1) The extent to which the act or failure to act was out of compliance: Respondents failed to properly install and maintain SESC's to prevent water pollution as required by the Permit, resulting in the discharge of sediments to freshwater wetlands. Compliance with the requirements of the Permit is very important to the regulatory program. Preventing water pollution is the primary goal of the regulatory program.</p> <p>(2) Environmental conditions: Lot 20 is an active residential construction site with greater than 5 acres of land disturbance located in the Pawtuxet River South Branch Watershed. Prior to the activities on Lot 20, the land was forested, and the freshwater wetlands were undisturbed.</p> <p>(3) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(5) Duration of the violation: Full duration is unknown – at least 2 days. DEM observed the violations during inspection conducted on Lot 20 on February 7, 2019 and June 14, 2019.</p> <p>(6) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the noncompliance. The SESC's were not properly installed and maintained on Lot 20 resulting in the permit non-compliance and adverse impact to the adjacent freshwater wetlands. The noncompliance observed on February 7, 2019 led to the issuance of the C&D. DEM is unaware of any reasonable or appropriate steps taken by Respondents to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for failure to comply with Water Quality Regulations, RIPDES Regulations, Freshwater Wetlands Regulations and the Permit. Respondents had full control over Lot 20 and the occurrence of the violations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to perform inspections in accordance with the Permit

VIOLATION NOs.: D (1), D (2)(d), and D (3)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to inspect the SESCOs as required by the Permit. Regular inspection of SESCOs is important to the regulatory program. Preventing water pollution is the primary goal of the regulatory program.
- (2) **Environmental conditions:** Considered, but not utilized for this calculation.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (5) **Duration of the violation:** Full duration is unknown – at least 1 day. DEM documented the violation during the inspection conducted on February 7, 2019.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the noncompliance. Petrucci told DEM that no SESC inspections had been conducted. It is not known to DEM if the noncompliance has been mitigated.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for failure to comply with the Water Quality Regulations, RIPDES Regulations and the Permit. Respondents had full control over Lot 20 and the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to maintain SESC's inspection records in accordance with the Permit
 VIOLATION NO.: D (1), D (3) and D (4)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ X TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to maintain SESC inspection records as required by the Permit. Retention of SESC inspection records is important to the regulatory program. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration is unknown. DEM inspected Lot 20 on June 14, 2019. Respondents failed to produce SESC inspection records during DEM's inspection. DEM's inspector requested that the latest SESC inspection records be submitted to DEM by electronic correspondence. As of the date of the NOV, Respondents have not submitted any SESC inspection records to DEM. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the noncompliance. DEM is unaware of any reasonable or appropriate steps taken by Respondents to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for failure to comply with Water Quality Regulations, RIPDES Regulations and the Permit. Respondents had full control over Lot 20 and the occurrence of the violations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250 \$1,000