

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: PENDAR REALTY I, LLC

**File Nos.: OCI-WP-22-194, RIR102322,
FWW22-0061 & STW22-028**

**Richard Marcello d/b/a Cedar
Forest Associates L.L.C.**

LABONTE LANDSCAPE CONSTRUCTION INC

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 Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under RIDEM’s jurisdiction.

B. ADMINISTRATIVE HISTORY

RIDEM issued a freshwater wetlands and stormwater discharge permit to PENDAR REALTY I, LLC (“PRI”), Cedar Forest Associates L.L.C. (“CFA”), and the Town of Smithfield, Rhode Island to construct a 2-lot residential subdivision at the property that is the subject of this Notice of Violation (“NOV”). On 9 November 2022, RIDEM inspected the property to determine compliance with the permit. On 12 December 2022, RIDEM issued an *Expedited Citation Notice* (“ECN”) to PRI, Richard Marcello (“Marcello”) d/b/a CFA, and the Town of Smithfield, Rhode Island by electronic mail for some of the violations that are the subject of the NOV. The ECN required specific actions to correct the violations and assessed a \$5,000 penalty. On 13 December 2022 and 19 December 2022, Marcello sent electronic correspondence to RIDEM in response to the ECN and provided one document, but otherwise did not comply with the ECN. On 3 May 2023, RIDEM inspected the property and documented new violations.

C. FACTS

- (1) The property is comprised of two separate lots and is located north and west of existing Cedar Forest Road, approximately 375 feet north of its intersection with Latham Farm Road, Assessor’s Plat 49, Lot 24 (“Lot 24”) and Plat 50, Lot 52 (“Lot 52”) in Smithfield, Rhode Island (collectively, “Property”).

- (2) On 16 February 2022, PRI, CFA, and the Town of Smithfield, Rhode Island applied to RIDEM to alter freshwater wetlands on the Property. Marcello signed the applications on behalf of PRI and CFA.
- (3) On 22 September 2003, Rhode Island's Secretary of State revoked the Certificate of Organization for CFA. Upon information and belief, Marcello is the last known manager for CFA.
- (4) On 22 June 2022, RIDEM issued a freshwater wetlands *Insignificant Alteration Permit* and a *General Permit for Stormwater Discharge Associated with Construction Activity* (collectively, "Permits") to PRI, CFA, and the Town of Smithfield, Rhode Island to extend Cedar Forest Road and construct 2 new single-family residences and associated infrastructure at the Property.
- (5) The Permits require:
 - (a) keeping a signed copy of the soil erosion and sediment control ("SESC") plan and all records of SESC inspections, maintenance, and repair on site during the extent of coverage of the Permit.
 - (b) installing SESCOs in accordance with a document titled "*Soil Erosion and Sediment Control Plan For: Cedar Forest Road Extension Cedar Forest Road Smithfield, RI AP 49, Lot 24; AP 50, Lot 52*" ("SESC Plan") and engineered plans titled "RIDEM PLAN FOR 2-LOT DEVELOPMENT CEDAR FOREST ROAD EXTENSION IN SMITHFIELD, RHODE ISLAND ("Approved Plans").
 - (c) maintaining, replacing, supplementing, or modifying the SESCOs as necessary throughout the life of the project to minimize soil erosion and to prevent sediment from being deposited in any freshwater wetlands not subject to disturbance under the Permit.
- (6) On 8 September 2022, PRI sold Lot 52 to Robert Brian and Ralph Crowley, III.
- (7) On 16 September 2022, PRI sold Lot 24 to Jordan C. Boyce and Samantha L. Boyce. Lot 24 includes a forested wetland ("Forested Wetland").
- (8) On 9 November 2022, RIDEM inspected the Property. The inspection revealed that:
 - (a) SESCOs were not installed in accordance with the SESC Plan and the Approved Plans. Specifically, approximately 3,177 linear feet of the required 3,247 linear feet (approximately) of SESCOs (in the form of compost filter socks) had not been installed along the limits of disturbance as evidenced by observation and photographs. Only approximately 70 linear feet of SESCOs (in the form of silt fencing) were installed in the vicinity of the Forested Wetland.
 - (b) SESCOs were not maintained and repaired as necessary to remain in effective operating condition. The SESCOs in the vicinity of the Forested Wetland were not being properly maintained as evidenced by observation and photographs of damaged silt fence that had been overtopped with soil and sediment.

- (c) Sediment was present beyond the SESC's in the Forested Wetland, as evidenced by observation and photographs.
- (9) On 3 May 2023, RIDEM inspected the Property. The inspection revealed that:
 - (a) LABONTE LANDSCAPE CONSTRUCTION INC ("Labonte") was onsite doing earth work to extend the access road.
 - (b) Labonte was not able to provide to RIDEM's inspector a copy of the signed SESC Plan or any SESC inspection, maintenance and repair records as required by the Permit.
 - (c) SESC's were not installed in accordance with the SESC Plan and the Approved Plans. Specifically, approximately 2,692 linear feet of the required 3,247 linear feet (approximately) of SESC's (in the form of compost filter socks) had not been installed along the limits of disturbance as evidenced by observation and photographs.
 - (d) SESC's were not maintained and repaired as necessary to remain in effective operating condition. The SESC's in the vicinity of the Forested wetland had not been properly maintained as evidenced by observation and photographs of damaged silt fence that had been overtopped with soil and sediment.
 - (e) Fill in the form of mulch and soil beyond the SESC's was present in the Forested Wetland.
- (10) Respondents failed to comply with the Permits for the instances of noncompliance described in sections C (8) and C (9) above. As the Permits were never transferred or terminated, Respondents remain responsible for compliance with the terms of the Permits.
- (11) Activities on the Property resulted in discharges of stormwater and sedimentation and filling of Forested Wetland that did not comply with conditions of the Permits.
- (12) As of the date of the NOV, Respondents have failed to correct the instances of noncompliance described in sections C (8) and C (9) above.

D. VIOLATION

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

- (1) **Rhode Island's Water Pollution Act 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) **Rhode Island’s *Water Quality Regulations (250-RICR-150-05-1) (“WQ Rules”)***
 - (a) **Part 1.13(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of a permit issued by RIDEM.
 - (b) **Part 1.18(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.

- (3) **Rhode Island’s *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1) (“RIPDES Rules”)***
 - (a) **Part 1.14(B)(1)** – requiring the permittee to comply with all conditions of a permit issued by RIDEM.
 - (b) **Part 1.14(E)** – requiring the permittee to take all reasonable steps to minimize or prevent a discharge in violation of the permit which has a reasonable likelihood of adverse affect to human health or the environment.
 - (c) **Part 1.14(F)** – requiring the permittee to maintain in good working order and operate as efficiently as possible all treatment works to achieve compliance with the permit.

- (4) **Rhode Island’s *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-3) (“FWW Rules”)***
 - (a) **Part 1.5(A)(1)** – prohibiting activities which may alter freshwater wetlands without a permit from RIDEM.
 - (b) **Part 1.9(D)(2)** – requiring compliance with all terms of a permit issued by RIDEM.

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 your receipt of the NOV**, maintain a copy of the signed SESC Plan at the Property for the project duration.
- (2) **Within 10 days of your receipt of the NOV**, install all SESC’s in accordance with a the SESC Plan and the Approved Plans.
- (3) **At all times for the project duration**, inspect, maintain, repair, replace, supplement, or modify any SESC’s as necessary to minimize soil erosion and remain in effective operating condition.

- (4) **At all times for the project duration**, keep SESC inspection, maintenance, and repair records onsite and available for RIDEM's review.
- (5) **Within 30 days of receipt of the NOV**, submit a plan to RIDEM prepared by a qualified wetland scientist to assess the impacts of sedimentation to the Forested Wetland ("Sediment Assessment Plan"). The Sediment 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. Re-flag the limits of the Forested Wetland if needed to properly assess the freshwater wetland.
- (6) **Within 30 days of RIDEM's approval of the Sediment Assessment Plan**, initiate the work in the Sediment Assessment Plan and complete all work in accordance with the approved schedule.
- (7) **Within 30 days of completion of the work in subsection E (6) above**, submit a report of the findings of the sediment assessment to RIDEM ("Sediment Assessment Report"). RIDEM will review the report and notify Respondents in writing whether Respondents need to prepare a restoration plan ("Wetland Restoration Plan"). The Wetland Restoration Plan shall describe the method(s) that will be used to remove non-native soil from the Forested Wetland and provide a proposed schedule for completion of the work. **Within 30 days of notification by RIDEM that the Wetland Restoration Plan is required, Respondents shall submit the Wetland Restoration Plan to RIDEM.**
- (8) The plans and reports required by subsections E (5) and E (7) above shall be subject to RIDEM's review and approval. Upon completing its review, RIDEM 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 RIDEM 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, jointly and severally, against each named respondent:

\$12,051

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Rules") and must be paid to RIDEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:
- (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:
- Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767.
- (b) By wire transfer in accordance with instructions provided by RIDEM.
- (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 RIDEM 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 RIDEM'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 RIDEM'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
RIDEM - Administrative Adjudication Division
235 Promenade Street, Room 350
Providence, RI 02908-5767
- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b).

- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of Rhode Island's 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:
- Jenna Giguere, Esquire
RIDEM - 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 RIDEM'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 Smithfield, Rhode Island wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 2-1-24, as is or 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) Jenna Giguere of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772306 or at jenna.giguere@dem.ri.gov. All other inquiries should be directed to Patrick Hogan of RIDEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777119 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
RIDEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

PENDAR REALTY I, LLC
c/o Richard Marcello, Resident Agent
2505 Boston Neck Road
Saunderstown, RI 02874

Richard Marcello d/b/a Cedar Forest Associates L.L.C.
700 Main Street
East Greenwich, RI 02818

LABONTE LANDSCAPE CONSTRUCTION INC
c/o Jack Bertherman, Registered Agent
2354 Main Road
Tiverton, RI 02878

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Water Pollution
 File No.: OCI-WP-22-194 X-ref RIR102322, STW22-028 and FW22-0061
 Respondents: PENDAR REALTY I, LLC, Richard Marcello d/b/a Cedar Forest Associates L.L.C., and LABONTE LANDSCAPE CONSTRUCTION INC

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)(a), & D(4)(b) – Failure to maintain SESC Plan onsite	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$2,500	1 violation	\$2,500
D(1), D(2), D(3)(a), & D(4)(b) – Failure to maintain SESC inspection records onsite	Type III <i>(\$6,250 Max. Penalty) *</i>	Minor	\$500	1 violation	\$500
D(1), D(2), D(3)(a), D(3)(b), D(4)(b) – Failure to install SESCOs in accordance with the Permits	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1 violation	\$2,500
D(1) – D(4) – Failure to maintain SESCOs resulting in adverse impact to the Forested Wetland	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	1 violation	\$6,250
<i>SUB-TOTAL</i>					\$11,750

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

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.

DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
<p>Delayed costs associated with installation of SESCOs in accordance with the Permits on 9 November 2022. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts, and values used in this analysis are listed in this table. The unit cost is based on the RI Department of Transportation Weighted Average Unit Bid Prices for the calendar year 2022.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C-Corp</p> <p>\$14,321.44</p> <p>November 2022</p> <p>June 30, 2023</p> <p>June 30, 2023</p> <p>6.7%</p>	
SUB-TOTAL			\$301

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 RIDEM 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 RULES = \$12,051

PENALTY MATRIX WORKSHEET

CITATION: Failure to maintain SESC Plan onsite
 VIOLATION Nos.: D(1), D(2), D(3)(a), & D(4)(b)

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

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

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to maintain a copy of the signed SESC Plan onsite. Maintaining the SESC Plan onsite 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. RIDEM inspected the Property on 3 May 2023, at which time Labonte did not produce the required SESC Plan.
- (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. It is not known to RIDEM if Respondents have since mitigated the non-compliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM 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 WQ Rules, RIPDES Rules, FWW Rules and the Permit. PRI and Marcello d/b/a CFA are responsible for ensuring compliance with the Permits issued to them. Labonte is responsible for ensuring that work it conducts complies with the Permits.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$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 \$2,500	\$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 maintain SESC inspection records onsite
 VIOLATION Nos.: D(1), D(2), D(3)(a) & D(4)(b)

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

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

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

- (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. SESC inspections and retention of the associated SESC inspection records is important to the regulatory program and required by the Permit.
- (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, but at least 1 day. RIDEM inspected the Property on 3 May 2023, at which time Labonte did not produce the required SESC inspection records.
- (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. It is not known to RIDEM if Respondents have since mitigated the non-compliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM 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 WQ Rules, RIPDES Rules, FWW Rules and the Permit. PRI and Marcello d/b/a CFA are responsible for ensuring compliance with the Permits issued to them. Labonte is responsible for ensuring that work it conducts complies with the Permits.
- (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 \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to install SESC's in accordance with the Permits

VIOLATION NOs.: D(1), D(2), D(3)(a), (D)(3)(b), & D(4)(b)

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

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to install SESC's in accordance with the SESC Plan and Approved Plans to prevent water pollution as required by the Permit. Installing SESC's is important to the regulatory program. Preventing water pollution is a primary goal of the regulatory program.
- (2) **Environmental conditions:** The Property is an active residential construction site with less than 5 acres of disturbance located in Woonasquatucket River watershed. The Property includes 3 swamps and associated perimeter wetlands, the Forested Wetland, an unnamed intermittent stream, and riverbank wetland.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (5) **Duration of the violation:** Full duration unknown – at least 6 months. RIDEM first documented the violation during an inspection conducted on 9 November 2022. RIDEM again documented the violation during an inspection conducted on 3 May 2023.
- (6) **Areal extent of the violation:** On 9 November 2022, RIDEM documented the installation of only approximately 70 linear feet of the required 3,247 linear feet of SESC's (in the form of filter socks). On 3 May 2023, RIDEM documented the installation of approximately 555 linear feet of the required 3,247 linear feet of SESC's.

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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 action to prevent the noncompliance. The SESC's were not installed throughout the Property as required by the Permit. RIDEM has no knowledge of what steps, if any, that Respondents have since taken 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 RIDEM, or any law which RIDEM 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 WQ Rules, RIPDES Rules, FWW Rules and the Permit. PRI and Marcello d/b/a CFA are responsible for ensuring compliance with the Permits issued to them. Labonte is responsible for ensuring that work it conducts complies with the Permits.
- (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 resulting in adverse impact to the Forested Wetland
 VIOLATION NOs.: D(1) – D(4)

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

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

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to properly maintain SESC's to prevent water pollution and freshwater wetland impacts as required by the Permit. Maintaining SESC's as required by the Permit is important to the regulatory program. Preventing water pollution and freshwater wetland impacts is a primary goal of the regulatory program.
- (2) **Environmental conditions:** The Property is an active residential construction site with less than 5 acres of disturbance located in Woonasquatucket River watershed. The Property includes 3 swamps and associated perimeter wetlands, the Forested Wetland, an unnamed intermittent stream, and riverbank wetland.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (5) **Duration of the violation:** Full duration unknown – at least 6 months. RIDEM first documented the violation on 9 November 2022 and again on 3 May 2023.
- (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 action to prevent the noncompliance. The SESC's were not properly maintained throughout the Property as required by the Permit. RIDEM has no knowledge of what steps, if any, Respondents have taken 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 RIDEM, or any law which RIDEM 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 WQ Rules, RIPDES Rules, FWW Rules and the Permit. PRI and Marcello d/b/a CFA are responsible for ensuring compliance with the Permits issued to them. Labonte is responsible for ensuring that work it conducts complies with the Permits.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Respondents' failure to properly maintain SESC's resulted in sedimentation of the Forested Wetland.

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