

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: TERRAPIN DEVELOPMENT, LLC

**FILE Nos.: OCI-WP-21-20
FWW16-0192, STW16-124,
and RIR101445**

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 party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM’s jurisdiction.

B. ADMINISTRATIVE HISTORY

On 18 October 2018, RIDEM issued a *General Permit for Stormwater Discharge Associated with Construction Activity* (“CGP”) for construction of a 20-lot residential subdivision and associated infrastructure at the property (“Subdivision”) that is subject to this Notice of Violation (“NOV”). The CGP expired on 25 September 2020. On 19 July 2022, RIDEM issued an *Expedited Citation Notice* (“ECN”) to Respondent for discharge of stormwater associated with construction activity from the property without a permit. The ECN required Respondent to immediately cease and desist from all earth work activities at the property until such time that Respondent obtains a permit from RIDEM and pay an assessed penalty. Respondent paid the penalty but did not apply for a permit. On 15 September 2022, Respondent met with RIDEM and agreed to apply for a permit. As of the date of the NOV, Respondent has failed to apply to RIDEM for a permit and continues to construct the residential subdivision at the property.

C. FACTS

- (1) The property is located at Hidden Meadows Drive, Assessor’s Plat 56, Lots 22, 23 and 49, and Plat 57, Lots 28 and 36 in Cumberland, Rhode Island (“Property”).
- (2) On 26 September 2018, RIDEM issued a statewide *General Permit for Stormwater Discharge Associated with Construction Activity* (“2018 Construction General Permit” or “2018 CGP”).
- (3) On 18 October 2018, RIDEM issued a *Permit to Alter Freshwater Wetlands* No. FWW16-0192 and a *General Permit for Stormwater Discharge Associated with Construction Activity* No. RIR101445 for construction of the Subdivision (“Wetlands Permit”).
- (4) Construction of the Subdivision results in land disturbance of greater than 5 acres.

- (5) On 17 October 2019, the Wetlands Permit expired.
- (6) On 25 September 2020, the 2018 CGP expired.
- (7) The discharge of stormwater from the Property associated with the construction of the Subdivision after 25 September 2020 was no longer authorized because the Wetlands Permit and 2018 CGP expired.
- (8) On 2 December 2020, RIDEM inspected the Property. The inspection revealed that construction of the Subdivision was ongoing.
- (9) On 3 March 2021, Attorney Alfred G. Thibodeau, resident agent for service for Respondent at the time, informed RIDEM by telephone that Respondent was constructing the Subdivision.
- (10) On 8 December 2021, 9 February 2022, and 9 January 2023, RIDEM inspected the Property. The inspections revealed that construction of the Subdivision was ongoing.
- (11) As of the date of the NOV, Respondent continues to:
 - (a) construct the Subdivision.
 - (b) discharge stormwater associated with construction activity from the Property.
- (12) As of the date of the NOV, Respondent does not have a permit from RIDEM to discharge stormwater associated with the construction of the Subdivision from the Property.

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) **R.I. Gen. Laws Section 46-12-5(c)** – prohibiting the construction or installation of any industrial, commercial, or other establishment, any modification or addition thereto, or undertaking any development which may result in the discharge of any pollutant into the waters of the state, unless the discharge is made to a system or means to prevent pollution approved by the director.
- (3) **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 an approval issued by RIDEM.

- (b) **Part 1.15(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to the waters of the State; or construction, installation or modification of any treatment works including the extension of sewers to an existing sewer system without having obtained all required approvals from the Director.
- (4) **Rhode Island’s Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1) (“RIPDES Rules”)**
 - (a) **Part 1.8(A)** – requiring any person who discharges or proposes to discharge pollutants into the waters of the State to submit a complete application to RIDEM for a permit.
 - (b) **Part 1.32(A)(1)(b)** – requiring anyone who discharges stormwater associated with construction activity to obtain a permit.

E. ORDER

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

- (1) **IMMEDIATELY CEASE AND DESIST FROM ALL EARTH WORK ACTIVITIES** at the Property. No earth work activities are allowed until such time that Respondent possesses a valid permit from RIDEM to discharge stormwater associated with the construction of the Subdivision.
- (2) **Within 30 days of receipt of the NOV**, apply to RIDEM for a permit to construct the Subdivision.
- (3) The application and any other supporting documents required in subsection E (2) above shall be subject to RIDEM’s review and approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies, submit to RIDEM additional information necessary 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:

\$9,596

- (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 Respondent 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:
- Tricia Quest, 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 Cumberland, 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 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) Tricia Quest of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772408 or at tricia.quest@dem.ri.gov. All other inquiries should be directed to Patrick J. 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:

TERRAPIN DEVELOPMENT, LLC
C/o Melissa McKee
Resident Agent for Service
8 Davis Street
Cumberland, RI 02864

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Water Pollution
 File No.: OCI-WP-21-20
 Respondent: TERRAPIN DEVELOPMENT, LLC

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) – D (4) Discharge of Stormwater Associated with Construction Activity without a Permit	Type I (\$25,000 Max. Penalty) *	Moderate	\$7,500	1 violation	\$7,500
<i>SUB-TOTAL</i>					\$7,500

*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.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Delayed costs associated with the design and submittal of an application for a <i>General Construction Permit</i> for a site without the presence of wetlands and without the presence of shallow bedrock, between the size of 1 acre to 5 acres. The economic benefit of non-compliance was determined 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.	<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 	C-Corp \$30,000 September 2020 April 1, 2023 April 1, 2023 6.7%	
<i>SUB-TOTAL</i>			\$2,096

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 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 = \$9,596

PENALTY MATRIX WORKSHEET

CITATION: Discharge of Stormwater Associated with Construction Activity without a Permit
 VIOLATION NOs.: D (1) - D (4)

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
 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:** Respondent discharged stormwater associated with the construction of the Subdivision without a permit from RIDEM. Preventing the discharge of stormwater associated with construction activity to a water of the State without a permit is very important to the regulatory program. The requirements associated with a permit are the principal means to protect waters of the State from being inundated with pollutants in the form of fine-grained soils, which can have a detrimental effect on the environment.
- (2) **Environmental conditions:** A wetland corridor that is contiguous with Diamond Hill Reservoir public drinking water supply is located predominately within the northern and western portions of the Property. The wetland corridor includes an unnamed river, stream, swamp, ponds, and associated perimeter wetlands and floodplain. The surface waters within these wetlands are classified as Class AA in the WQ Rules. Among other uses, these waters are designated as tributary waters within a public drinking water supply watershed. These waters shall have excellent aesthetic value.
- (3) **Amount of the pollutant:** Unknown – depends on the intensity and duration of rainstorms.
- (4) **Toxicity or nature of the pollutant:** Fine grained soils when discharged can increase the turbidity of the receiving waterbody. Turbid water affects the physical and biological characteristics of the waterbody which negatively affects fish and wildlife and aesthetics.
- (5) **Duration of the violation:** Ongoing since September 25, 2020 – 2 years, 4 months to date.
- (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:** Respondent failed to prevent the noncompliance by renewing the permit. Respondent has not mitigated the noncompliance despite receiving the ECN requiring that it do so.
- (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 Respondent for its failure to comply with Rhode Island’s Water Pollution Act, WQ Rules, and RIPDES Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The ECN included an administrative penalty of \$5,000 for the violations that are the subject of the NOV. Respondent paid the penalty in full on 19 September 2022. The penalty assessed in the NOV was reduced by \$5,000 to reflect Respondent’s previous penalty payment.

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 \$7,500	\$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