

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

**IN RE: North American Catholic Educational
Programming Foundation, Inc.**

FILE NO.: OCI-FW-17-129

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 party (“Respondent”) has violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Administrative History

On 2 August 2017, the DEM issued a letter advising Respondent of alterations to freshwater wetlands on the northernmost portion of the property that is the subject of this Notice of Violation (“NOV”). The letter required Respondent to cease and desist from further alteration of the wetlands and to restore the wetlands. Respondent filed an appeal of the letter with the DEM and submitted documents to the DEM to support that Respondent met the definition of a farmer as that term is defined in Rhode Island’s *Freshwater Wetlands Act*. The DEM reviewed the documents and determined that Respondent met the definition of a farmer; however, Respondent was not a farmer at the time Respondent altered the wetlands and, even if Respondent were a farmer, the alterations required a permit from the DEM. As of the date of the NOV, Respondent has not applied to the DEM for a permit and has not restored the wetlands.

C. Facts

- (1) The property is located approximately 800 feet north of Hartford Pike, approximately 500 feet west of the intersection with Regina Drive, Assessor’s Plat 24, Lot 31 in the Town of Scituate, Rhode Island (the “Property”).
- (2) Respondent owns the Property.
- (3) On 3 September 2014, Respondent submitted to the DEM an application to alter freshwater wetlands on the Property (the “Application”). The plan submitted with the Application showed extensive wetlands on the Property and proposed altering wetlands in the southernmost portion of the Property to construct agricultural fields, a house, a garage, barns, greenhouses, wells, storage tanks, an onsite wastewater treatment system, and drainage. The Application did not propose altering any wetlands located on the northernmost portions of the Property.

- (4) On 6 November 2014, the DEM issued a permit (the “Permit”) authorizing the alteration of certain wetlands in the southeasternmost portion of the Property.
- (5) On 26 July 2017 and 26 September 2017, the DEM inspected the Property. The inspections revealed the following:
 - (a) Clearing, grubbing, stumping, filling (in the form of at least soil, gravel, rocks, boulders, concrete bridge slabs and sediment), grading, and soil disturbances within a Swamp, Streams, Perimeter Wetlands and Riverbank Wetlands associated with the construction of a road. These activities altered approximately 38,300 square feet of freshwater wetlands;
 - (b) Clearing, grubbing, stumping, filling (in the form of at least soil, gravel, rocks, boulders, logs, stumps and sediment), grading, excavating and soil disturbances within Swamp associated with the construction of a second road. These activities altered approximately 10,000 square feet of freshwater wetlands;
 - (c) Ditching, diverting, filling (in the form of soil, gravel, rocks, boulders and sediment) and soil disturbances within a River (Rush Brook). These activities altered approximately 150 linear feet (1,500 square feet) of freshwater wetlands;
 - (d) Clearing, grubbing, stumping, filling (in the form of at least soil, rocks, mulch, logs, stumps and slash), grading, and soil disturbances within Swamp. These activities altered approximately 5 acres of freshwater wetlands; and
 - (e) Clearing, grubbing, stumping, filling (in the form of at least soil, mulch, rocks, boulders, logs, stumps and slash), grading, and soil disturbances within Riverbank Wetlands and Perimeter Wetlands. These activities altered approximately 8.5 acres of freshwater wetlands.
- (6) The activities described in Fact C (5) above were not exempt in accordance with Rule 6.00 of the DEM’s *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (the “Freshwater Wetlands Regulations”).
- (7) Respondent did not receive a permit from the DEM to alter the freshwater wetlands on the Property in the areas described in Fact C (5) 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) **R.I. Gen. Laws Section 2-1-21** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (2) **DEM's Freshwater Wetland Regulations, Rule 5.01** – prohibiting activities which may alter freshwater wetlands without a permit from the 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) **IMMEDIATELY** cease and desist from any further alteration of the above described freshwater wetlands.
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) Prior to the commencement of restoration, properly install a continuous uninterrupted line of staked haybales, straw wattles, silt fence, or other acceptable soil erosion/sediment control devices between all existing disturbed surfaces/areas to be restored and any adjacent undisturbed freshwater wetlands. Prior to any restoration work within watercourses, appropriate log-and-hay check-dams must be installed within the affected channels immediately downstream of the required restoration work zones. Downstream of the log-and-hay check-dams, haybale check-dams must be installed for an adequate distance and at appropriate intervals to ensure the prevention of any further adverse impacts to downstream wetland resources.
- (b) Re-establish the River channel (Rush Brook) to its original condition, including width and location. All unauthorized fill (consisting of soil, gravel, stones/rocks, boulders) must be removed and deposited in an appropriate upland location, outside of all wetlands. The channel must be constructed at the proper grades to allow the river to flow freely and feed into the original (unaltered) channel downstream. The restored slopes and stream bed must be temporarily stabilized with excelsior matting, jute mesh, or other acceptable (biodegradable) erosion control matting material and seeded with a proper wetland seed mix. All restoration work within the river must occur as soon as possible, but under acceptable "low flow" conditions, as deemed appropriate by the DEM.

- (c) Remove all unauthorized fill material (including at least concrete slabs, soil material, gravel, stones/rocks, boulders, logs, brush and slash, mulch, and stumps) from the Swamp, the Streams, the Perimeter Wetlands, and the Riverbank Wetlands. Work must begin at the farthest (north, northeast, and western) limits of unauthorized activities and continue in a generally southerly direction until reaching the portion of the Property where activities have been authorized by the DEM under the Permit. All fill material that is removed must be deposited in an appropriate upland location, outside of all wetlands. Fill material must be removed down to original grade to match the surface elevations of the surrounding undisturbed wetlands. All channels must be constructed at the proper grades to allow the re-established Streams to flow freely and feed into the original (unaltered) channel downstream of each crossing/altered channel. All restoration work within the Swamp and Streams must be undertaken during an accepted “low flow” period (generally July 1 - October 31).
- (d) Re-grade all slopes resulting from fill removal as well as all areas encompassing the required wetland restoration work, to match existing undisturbed surrounding grades. A minimum 3:1 slope must be maintained at the limits of the required restoration.
- (e) Following the completion of fill removal, plant trees and shrubs in all unauthorized cleared and altered areas within the Swamp (including within the restored road corridors), at the direction and discretion of the DEM. The plants **must** be obtained from nursery stock that has been raised in hydric conditions. If necessary, to improve survivability, plants may be installed within small raised mounds (slightly elevated only) of high-organic plantable soil material (only). Plants must be installed in these locations as follows:

Balled and burlapped or transplanted tree species must be planted in interspersed fashion, 15 feet on center, 4 feet tall after planting, throughout the area defined above. Tree species must include an equal distribution of at least 3 of the following selections:

Red maple, *Acer rubrum*
Box elder, *Acer negundo*
Black gum (Tupelo), *Nyssa sylvatica*
Green Ash, *Fraxinus pennsylvanica*
Silver maple, *Acer saccharinum*
Swamp white oak, *Quercus bicolor*
Black willow, *Salix nigra*
Pin oak, *Quercus palustris*
Yellow Birch, *Betula allegheniensis*

Balled and burlapped or transplanted shrub species must be planted in interspersed fashion 10 feet on center, 3 feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least 4 of the following selections:

Silky dogwood, *Cornus amomum*
Red osier dogwood, *Cornus sericea* spp. *sericea* L
Arrowwood, *Viburnum dentatum*
Elderberry, *Sambucus canadensis*
Winterberry, *Ilex verticillata*
Highbush blueberry, *Vaccinium corymbosum*
Spice bush, *Lindera benzoin*
Swamp rose, *Rosa palustris*
Swamp azalea, *Rhododendron viscosum*

- (f) Following the completion of fill removal, plant all unauthorized cleared/altered portions of Perimeter Wetlands and Riverbank Wetlands areas with trees and shrubs, at the direction of the DEM, as follows:

Balled and burlapped or transplanted tree species must be planted in interspersed fashion, 10 feet on center, 4 to 5 feet tall after planting, throughout the areas defined above. Tree species must include an equal distribution of at least 4 of the following selections:

White pine, *Pinus strobus*
Red maple, *Acer rubrum*
Northern red oak, *Quercus rubra*
White oak, *Quercus alba*
White ash, *Fraxinus americana*
American beech, *Fagus grandifolia*
Sassafras, *Sassafras albidum*
Gray Birch, *Betula populifolia*

Balled and burlapped or transplanted shrub species must be planted in interspersed fashion 5 feet on center, at least 3 feet tall after planting, throughout the areas defined above. Shrub species must include an equal distribution of at least 4 of the following selections:

Mountain laurel, *Kalmia latifolia*
Giant rhododendron, *Rhododendron maximum* (shaded areas only)
Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*
Arrowwood (southern), *Viburnum dentatum*
American cranberrybush, *Viburnum trilobum*
Mapleleaf viburnum, *Viburnum acerifolium*
Inkberry, *Ilex glabra*
Highbush blueberry, *Vaccinium corymbosum*

Lowbush blueberry, *Vaccinium angustifolium*
Sweet pepperbush, *Clethra alnifolia*
Bayberry, *Myrica pennsylvanica*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

In addition, balled and burlapped or transplanted evergreen tree species must be planted in a straight line, 8 feet on center, 5 to 6 feet tall after planting, along the entire outer (landward) edge of the southernmost disturbed Perimeter Wetland edge. The tree species to be utilized for this screening line must include at 2 of the following selections:

Northern white cedar, *Thuja occidentalis*
White pine, *Pinus strobus*
Pitch Pine, *Pinus rigida*
Eastern hemlock, *Tsuga canadensis*
Red cedar, *Juniperus virginiana*

- (g) Any of the required plantings failing to survive at least 2 full growing seasons from the time they have been planted must be replanted (with the same or similar species) and further replaced (as necessary) until such time that survival is maintained over 2 full growing seasons.
- (h) All disturbed surfaces within wetlands and the surrounding areas, resulting from the above restoration activities (or other activities on the Property), shall be covered with a suitable plantable soil (as necessary) and properly seeded and stabilized. If not present following fill removal and backfilling restoration activities, all affected Swamp and Stream-bed locations must be covered with a minimum 6 inches of high-organic soil material and seeded with a proper wetland seed mixture. If not present following the above restoration activities, all affected Perimeter Wetlands and Riverbank Wetlands must be covered with a minimum 4 inches of plantable soil and seeded with a proper wildlife conservation grass seed mixture. A thick mat of loose straw mulch, **which is free of any contaminants that may contain invasive plant seed material**, must be applied to all disturbed surfaces to prevent soil erosion and control possible sedimentation processes from occurring. Hydro-seed, containing the proper seed components and mixed with a proper tackifier (stabilizing mulch material), may be utilized in lieu of the above stabilization measures. Steeply sloping areas or denuded/disturbed areas to be left exposed for long periods of time must be covered with excelsior matting, jute mesh, or other acceptable (biodegradable) erosion control matting material.

- (i) All restored wetland areas, including replanted areas, must be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other disturbances, alterations, or improvements are allowed within the restored wetland areas, or within any other freshwater wetlands on the Property, without first obtaining a permit from the DEM. Upon stabilization of disturbed/restored surface areas, all artificial erosion and sedimentation controls (e.g., silt fences) must be removed from freshwater wetlands. Staked haybales, spread straw mulch, and other naturally-based/bio-degradable erosion control measures may remain in place to decompose naturally. Prior to the removal of the controls and/or prior to the contractor vacating the Property, all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.
- (j) All the restoration work outlined above must be completed on or before **15 October 2018**.
- (k) Contact the DEM prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No work shall commence until such time that you have met in the field with a DEM agent.

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:

\$50,000

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties* and must be paid to the 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 Account" and shall be forwarded to the DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (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.

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 the 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 the 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, Suite 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 DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:

Christina A. 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 the 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 Town of Scituate, Rhode Island to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 2-1-24, 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 A. Hoefsmit of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David Chopy of the DEM's Office of Compliance and Inspection at (401) 222-1360 extension 7400.

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, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

North American Catholic Educational Programming Foundation, Inc.
c/o John R. Primeau, Registered Agent
47 Meadowview Boulevard
North Providence, RI 02904

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS
 File No.: OCI-FW-17-129
 Respondent: North American Catholic Educational Program Foundation, 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) and D (2) Wetland Alterations – Fact C(3)(a) | Type I (\$10,000 Max. Penalty) * | Major | \$10,000 | 1 violation | \$10,000 |
| D (1) and D (2) Wetland Alterations – Fact C(3)(b) | Type I (\$10,000 Max. Penalty) * | Major | \$10,000 | 1 violation | \$10,000 |
| D (1) and D (2) Wetland Alterations – Fact C(3)(c) | Type I (\$10,000 Max. Penalty) * | Major | \$10,000 | 1 violation | \$10,000 |
| D (1) and D (2) Wetland Alterations – Fact C(3)(d) | Type I (\$10,000 Max. Penalty) * | Major | \$10,000 | 1 violation | \$10,000 |
| D (1) and D (2) Wetland Alterations – Fact C(3)(e) | Type I (\$10,000 Max. Penalty) * | Major | \$10,000 | 1 violation | \$10,000 |
| SUB-TOTAL | | | | | \$50,000 |

*Maximum Penalties represent the maximum penalty amounts 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 Respondent has 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.

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 the 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 = \$50,000

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations
 VIOLATION NO.: D (1) and D (2) – Fact C(3)(a)

| 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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent altered freshwater wetlands by clearing, grubbing, stumping, filling (in the form of at least soil, gravel, rocks, boulders, concrete bridge slabs and sediment), grading and soil disturbances within a Swamp, Streams, Perimeter Wetlands and Riverbank Wetlands to widen an existing road. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.
- (2) **Environmental conditions:** The Property is approximately 154 acres. A large majority of the Property is covered by forested swamp, including portions characterized by narrow corridors/fingers of swamp associated with numerous braided and intersecting stream channels and a river (Rush Brook, a cold-water fishery habitat). All the stream channels merge with Rush Brook near the eastern Property line, and all are tributaries to a drinking water supply/surface water protection area (Scituate Reservoir). An approximately 10-acre area in the southeastern corner of the Property was approved to be developed as a farm under the Permit. The remaining 140+ acres were forested when the Permit was issued, except for a power line right of way crossing that was vegetated with shrubs and saplings and an existing colonial trail that was a maximum of 10 feet wide and thickly vegetated with low shrubs and herbaceous vegetation, both of which went through the northern portion of the Property.
- (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 8 months. The DEM first became aware of the alterations on or about 26 July 2017 when the DEM inspected the Property.
- (6) **Areal extent of the violation:** Approximately 38,300 square feet.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. Respondent applied to the DEM to alter wetlands on the southeastern portion of the Property, and the plan submitted with the application identified the wetlands on the northern portion of the Property that are the subject of the NOV. The Permit clearly stated that changes or revisions to the project that would alter freshwater wetlands were not authorized without a permit from the DEM. Respondent proceeded to alter the wetlands in the northern portion of the Property without applying for any permits from the DEM or following any best management practices. Respondent has taken no steps to mitigate the noncompliance. On 2 August 2017, the DEM issued a letter to Respondent to cease and desist further alteration of the wetlands and restore the wetlands. Respondent filed an appeal of the letter to the DEM's Administrative Adjudication Division. On 26 September 2017, the DEM inspected the Property. The inspection revealed that no efforts were made to restore the wetlands and the sediment and erosion controls that were installed were done so incorrectly and were not preventing erosion or sedimentation.
- (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:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Property and knowledge of the DEM's Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows the DEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing. The widening of the road resulted in at least 15 separate and distinct violations. The DEM could have assessed a maximum penalty of \$10,000 for each violation; however, the DEM decided to assess a single penalty for all the violations.

| | | |
|----------------|----------|-------|
| <u>X</u> MAJOR | MODERATE | MINOR |
|----------------|----------|-------|

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000 | | TYPE I | TYPE II | TYPE III |
|---|--------------|--|--------------------|--------------------|
| DEVIATION FROM STANDARD | MAJOR | \$5,000 to \$10,000 \$10,000 | \$2,500 to \$5,000 | \$1,000 to \$2,500 |
| | MODERATE | \$2,500 to \$5,000 | \$1,000 to \$2,500 | \$500 to \$1,000 |
| | MINOR | \$1,000 to \$2,500 | \$500 to \$1,000 | \$100 to \$500 |

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations
 VIOLATION NO.: D (1) and D (2) – Fact C(3)(b)

| 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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent altered freshwater wetlands by clearing, grubbing, stumping, filling (in the form of at least soil, gravel, rocks, boulders, logs, stumps and sediment), grading, excavating and soil disturbances within Swamp to construct a second road. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program
- (2) **Environmental conditions:** The Property is approximately 154 acres. A large majority of the Property is covered by forested swamp, including portions characterized by narrow corridors/fingers of swamp associated with numerous braided and intersecting stream channels and a river (Rush Brook, a cold-water fishery habitat). All the stream channels merge with Rush Brook near the eastern Property line, and all are tributaries to a drinking water supply/surface water protection area (Scituate Reservoir). An approximately 10-acre area in the southeastern corner of the Property was approved to be developed as a farm under the Permit. The remaining 140+ acres were forested when the Permit was issued, except for a power line right of way crossing that was vegetated with shrubs and saplings and an existing colonial trail that was a maximum of 10 feet wide and thickly vegetated with low shrubs and herbaceous vegetation, both of which went through the northern portion of the Property.
- (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 8 months. The DEM first became aware of the alterations on or about 26 July 2017 when the DEM inspected the Property.
- (6) **Areal extent of the violation:** Approximately 10,000 square feet.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. Respondent applied to the DEM to alter wetlands on the southeastern portion of the Property, and the plan submitted with the application identified the wetlands on the northern portion of the Property that are the subject of the NOV. The Permit clearly stated that changes or revisions to the project that would alter freshwater wetlands were not authorized without a permit from the DEM. Respondent proceeded to alter the Swamp in the northern portion of the Property without applying for any permits from the DEM or following any best management practices. Respondent has taken no steps to mitigate the noncompliance. On 2 August 2017, the DEM issued a letter to Respondent to cease and desist further alteration of the wetlands and restore the wetlands. Respondent filed an appeal of the letter to the DEM's Administrative Adjudication Division. On 26 September 2017, the DEM inspected the Property. The inspection revealed that no efforts were made to restore the Swamp and the sediment and erosion controls that were installed were done so incorrectly and were not preventing erosion or sedimentation.
- (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:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Property and knowledge of the DEM's Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

| | | |
|----------------|----------|-------|
| <u>X</u> MAJOR | MODERATE | MINOR |
|----------------|----------|-------|

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000 | | TYPE I | TYPE II | TYPE III |
|---|--------------|--|--------------------|--------------------|
| DEVIATION FROM STANDARD | MAJOR | \$5,000 to \$10,000 \$10,000 | \$2,500 to \$5,000 | \$1,000 to \$2,500 |
| | MODERATE | \$2,500 to \$5,000 | \$1,000 to \$2,500 | \$500 to \$1,000 |
| | MINOR | \$1,000 to \$2,500 | \$500 to \$1,000 | \$100 to \$500 |

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations

VIOLATION NO.: D (1) and D (2) – Fact C(3)(c)

| TYPE | | |
|--|--|---|
| <p style="text-align: center;"><u> X </u> 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;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p> |
| DEVIATION FROM THE STANDARD | | |
| THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED. | | |
| <p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent altered freshwater wetlands by ditching, diverting, filling (in the form of soil, gravel, rocks, boulders and sediment) and soil disturbances within a River (Rush Brook). The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Property is approximately 154 acres. A large majority of the Property is covered by forested swamp, including portions characterized by narrow corridors/fingers of swamp associated with numerous braided and intersecting stream channels and a river (Rush Brook, a cold-water fishery habitat). All the stream channels merge with Rush Brook near the eastern Property line, and all are tributaries to a drinking water supply/surface water protection area (Scituate Reservoir). An approximately 10-acre area in the southeastern corner of the Property was approved to be developed as a farm under the Permit. The remaining 140+ acres were forested when the Permit was issued, except for a power line right of way crossing that was vegetated with shrubs and saplings and an existing colonial trail that was a maximum of 10 feet wide and thickly vegetated with low shrubs and herbaceous vegetation, both of which went through the northern portion of the Property. (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 8 months. The DEM first became aware of the alterations on or about 26 July 2017 when the DEM inspected the Property. (6) Areal extent of the violation: Approximately 150 linear feet (1,500 square feet). | | |
| (continued) | | |

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. Respondent applied to the DEM to alter wetlands on the southeastern portion of the Property, and the plan submitted with the application identified the wetlands on the northern portion of the Property that are the subject of the NOV. The Permit clearly stated that changes or revisions to the project that would alter freshwater wetlands were not authorized without a permit from the DEM. Respondent proceeded to alter the River in the northern portion of the Property without applying for any permits from the DEM or following any best management practices. Respondent has taken no steps to mitigate the noncompliance. On 2 August 2017, the DEM issued a letter to Respondent to cease and desist further alteration of the wetlands and restore the wetlands. Respondent filed an appeal of the letter to the DEM's Administrative Adjudication Division. On 26 September 2017, the DEM inspected the Property. The inspection revealed that no efforts were made to restore the River and the sediment and erosion controls that were installed were done so incorrectly and were not preventing erosion or sedimentation.
- (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:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Property and knowledge of the DEM's Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows the DEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing. The diverting of the River resulted in 5 separate and distinct violations. The DEM could have assessed a maximum penalty of \$10,000 for each violation; however, the DEM decided to assess a single penalty for all the violations.

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| <u>X</u> MAJOR | MODERATE | MINOR |
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| Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000 | | TYPE I | TYPE II | TYPE III |
|---|--------------|--|--------------------|--------------------|
| DEVIATION FROM STANDARD | MAJOR | \$5,000 to \$10,000 \$10,000 | \$2,500 to \$5,000 | \$1,000 to \$2,500 |
| | MODERATE | \$2,500 to \$5,000 | \$1,000 to \$2,500 | \$500 to \$1,000 |
| | MINOR | \$1,000 to \$2,500 | \$500 to \$1,000 | \$100 to \$500 |

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations

VIOLATION NO.: D (1) and D (2) – Fact C(3)(d)

| TYPE | | |
|---|--|---|
| <p style="text-align: center;"><u> X </u> 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;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p> |
| DEVIATION FROM THE STANDARD | | |
| THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED. | | |
| <p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent altered freshwater wetlands by clearing, grubbing, stumping, filling (in the form of at least soil, rocks, mulch, logs, stumps and slash), grading, and soil disturbances within Swamp. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Property is approximately 154 acres. A large majority of the Property is covered by forested swamp, including portions characterized by narrow corridors/fingers of swamp associated with numerous braided and intersecting stream channels and a river (Rush Brook, a cold-water fishery habitat). All the stream channels merge with Rush Brook near the eastern Property line, and all are tributaries to a drinking water supply/surface water protection area (Scituate Reservoir). An approximately 10-acre area in the southeastern corner of the Property was approved to be developed as a farm under the Permit. The remaining 140+ acres were forested when the Permit was issued, except for a power line right of way crossing that was vegetated with shrubs and saplings and an existing colonial trail that was a maximum of 10 feet wide and thickly vegetated with low shrubs and herbaceous vegetation, both of which went through the northern portion of the Property. (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 8 months. The DEM first became aware of the alterations on or about 26 July 2017 when the DEM inspected the Property. (6) Areal extent of the violation: Approximately 5 acres. | | |
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. Respondent applied to the DEM to alter wetlands on the southeastern portion of the Property, and the plan submitted with the application identified the wetlands on the northern portion of the Property that are the subject of the NOV. The Permit clearly stated that changes or revisions to the project that would alter freshwater wetlands were not authorized without a permit from the DEM. Respondent proceeded to alter the Swamp in the northern portion of the Property without applying for any permits from the DEM or following any best management practices. Respondent has taken no steps to mitigate the noncompliance. On 2 August 2017, the DEM issued a letter to Respondent to cease and desist further alteration of the wetlands and restore the wetlands. Respondent filed an appeal of the letter to the DEM's Administrative Adjudication Division. On 26 September 2017, the DEM inspected the Property. The inspection revealed that no efforts were made to restore the Swamp and the sediment and erosion controls that were installed were done so incorrectly and were not preventing erosion or sedimentation.
- (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:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Property and knowledge of the DEM's Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows the DEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing. The diverting of the River resulted in 6 separate and distinct violations. The DEM could have assessed a maximum penalty of \$10,000 for each violation; the DEM decided to assess a single penalty for all the violations.

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| <u>X</u> MAJOR | MODERATE | MINOR |
|----------------|----------|-------|

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000 | | TYPE I | TYPE II | TYPE III |
|---|----------|--|--------------------|--------------------|
| DEVIATION FROM STANDARD | MAJOR | \$5,000 to \$10,000 \$10,000 | \$2,500 to \$5,000 | \$1,000 to \$2,500 |
| | MODERATE | \$2,500 to \$5,000 | \$1,000 to \$2,500 | \$500 to \$1,000 |
| | MINOR | \$1,000 to \$2,500 | \$500 to \$1,000 | \$100 to \$500 |

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations

VIOLATION NO.: D (1) and D (2) – Fact C(3)(e)

| TYPE | | |
|---|--|---|
| <p style="text-align: center;"><u> X </u> 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;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p> |
| DEVIATION FROM THE STANDARD | | |
| THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED. | | |
| <p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent altered freshwater wetlands by clearing, grubbing, stumping, filling (in the form of at least soil, mulch, rocks, boulders, logs, stumps and slash), grading, and soil disturbances within Riverbank Wetland and Perimeter Wetland. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Property is approximately 154 acres. A large majority of the Property is covered by forested swamp, including portions characterized by narrow corridors/fingers of swamp associated with numerous braided and intersecting stream channels and a river (Rush Brook, a cold-water fishery habitat). All the stream channels merge with Rush Brook near the eastern Property line, and all are tributaries to a drinking water supply/surface water protection area (Scituate Reservoir). An approximately 10-acre area in the southeastern corner of the Property was approved to be developed as a farm under the Permit. The remaining 140+ acres were forested when the Permit was issued, except for a power line right of way crossing that was vegetated with shrubs and saplings and an existing colonial trail that was a maximum of 10 feet wide and thickly vegetated with low shrubs and herbaceous vegetation, both of which went through the northern portion of the Property. (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 8 months. The DEM first became aware of the alterations on or about 26 July 2017 when the DEM inspected the Property. (6) Areal extent of the violation: Approximately 8.5 acres. | | |
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. Respondent applied to the DEM to alter wetlands on the southeastern portion of the Property, and the plan submitted with the application identified the wetlands on the northern portion of the Property that are the subject of the NOV. The Permit clearly stated that changes or revisions to the project that would alter freshwater wetlands were not authorized without a permit from the DEM. Respondent proceeded to alter the Perimeter Wetlands and Riverbank Wetlands in the northern portion of the Property without applying for any permits from the DEM or following any best management practices. Respondent has taken no steps to mitigate the noncompliance. On 2 August 2017, the DEM issued a letter to Respondent to cease and desist further alteration of the wetlands and restore the wetlands. Respondent filed an appeal of the letter to the DEM's Administrative Adjudication Division. On 26 September 2017, the DEM inspected the Property. The inspection revealed that no efforts were made to restore the Perimeter Wetlands and Riverbank Wetlands and the sediment and erosion controls that were installed were done so incorrectly and were not preventing erosion or sedimentation.
- (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:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Property and knowledge of the DEM's Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows the DEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing. The diverting of the River resulted in 5 separate and distinct violations. The DEM could have assessed a maximum penalty of \$10,000 for each violation; however, the DEM decided to assess a single penalty for all the violations.

| | | |
|----------------|----------|-------|
| <u>X</u> MAJOR | MODERATE | MINOR |
|----------------|----------|-------|

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000 | | TYPE I | TYPE II | TYPE III |
|---|--------------|--|--------------------|--------------------|
| DEVIATION FROM STANDARD | MAJOR | \$5,000 to \$10,000 \$10,000 | \$2,500 to \$5,000 | \$1,000 to \$2,500 |
| | MODERATE | \$2,500 to \$5,000 | \$1,000 to \$2,500 | \$500 to \$1,000 |
| | MINOR | \$1,000 to \$2,500 | \$500 to \$1,000 | \$100 to \$500 |