

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

IN RE: Stephen R. Archambault

FILE NO.: FW C10-224

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 DEM’s jurisdiction.

B. Administrative History

On October 24, 2002 DEM issued a permit to the Respondent authorizing work adjacent to some of the freshwater wetlands that are the subject of this notice. The Respondent recorded the permit in the land evidence records of the town of Smithfield and notified DEM that he intended to comply with the permit. The Respondent failed to comply with the permit and altered other freshwater wetlands on the property that were not subject to the permit.

C. Facts

- (1) The property is located south-southeast of Whipple Road, Assessor's Plat 44, Lot 10 in the town of Lincoln, Rhode Island and Assessor's Plat 42, Lot 14A in the town of Smithfield, Rhode Island (the “Property”).
- (2) The Respondent owns the Property.
- (3) DEM inspected the Property on October 19, 2010 and November 23, 2010. The inspections revealed the following unauthorized alterations of freshwater wetlands:
 - (a) Clearing and filling (in the form of at least soil material and boulders) within 50-foot Perimeter Wetland (along the pond in the northeast corner of the Property). This activity has resulted in the unauthorized alteration of approximately 15,000 square feet of freshwater wetland.
 - (b) Clearing and filling (in the form of at least soil material and boulders) within 100-foot Riverbank Wetland, portions of which are also 50-foot Perimeter Wetland (along the west-southwest side of the Property). This activity has resulted in the unauthorized alteration of approximately 13,000 square feet of freshwater wetland.

- (c) Clearing and filling (in the form of at least soil material and boulders) within 100-foot Riverbank Wetland, portions of which are also 50-foot Perimeter Wetland (along the west-northwest side of the Property). This activity has resulted in the unauthorized alteration of approximately 35,000 square feet of freshwater wetland.
 - (d) Clearing and filling (in the form of at least soil material and boulders) within 50-foot Perimeter Wetland (along the western side of the Property). This activity has resulted in the unauthorized alteration of approximately 3,200 square feet of freshwater wetland.
 - (e) Clearing within Swamp (in the northeast corner of the Property). This activity has resulted in the unauthorized alteration of approximately 1,800 square feet of freshwater wetland.
- (4) The Respondent did not receive approval from DEM to alter the freshwater wetlands on the Property in the areas specified 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 Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act, 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) Cease and desist **IMMEDIATELY** from any further alteration of the above described freshwater wetlands, and
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) Prior to the commencement of restoration, install a continuous uninterrupted line of staked haybales or silt fence between all areas to be restored and the adjacent undisturbed freshwater wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced) during and following the completion of the required wetland restoration activities, and until such time that all surrounding areas are properly stabilized. At the discretion and direction of representatives of DEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
- (b) Remove all unauthorized fill material (e.g., soil material, boulders) from the Swamp, along the Pond, and in the 50-foot Perimeter Wetlands and 100-foot Riverbank Wetlands. All unauthorized fill material must be removed down to the grade that existed prior to filling. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all freshwater wetlands.
- (c) Following fill removal from the Swamp, a wetland seed mix must be applied to the surface areas of the restored Swamp and a wildlife conservation seed mix must be applied to any re-established side slopes, with a mat of spread hay mulch also applied over all disturbed surface areas.
- (d) Following fill removal from the 50-foot Perimeter Wetlands and 100-foot Riverbank Wetlands, all disturbed soils shall be loamed (if necessary), seeded with a wildlife conservation grass seed mixture, and covered with a mat of loose hay mulch. Hydroseed, containing the proper seed components and mixed with a proper tackifier (stabilizing mulch material), may be utilized in appropriate areas in lieu of the above stabilization measures. If necessary, steeply sloping areas or denuded/disturbed areas to be left exposed for long periods of time must be covered with excelsior matting or jute mesh.
- (e) All slopes resulting from fill removal must be graded to a maximum 3:1 slope, with the top of the slope matching the existing surrounding undisturbed areas.
- (f) All areas that were cleared in the 50-foot Perimeter Wetlands and 100-foot Riverbank Wetlands must be replanted with trees and shrubs as required below:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, twenty (20) feet on center, four (4) feet tall after planting, throughout the areas defined above. Tree species must

include an equal distribution of at least four of the following selections:

White pine, *Pinus strobus*
Northern white cedar, *Thuja occidentalis*
Red maple, *Acer rubrum*
Box elder, *Acer negundo*
Black Cherry, *Prunus serotina*
White ash, *Fraxinus americana*
White oak, *Quercus alba*
Northern red oak, *Quercus rubra*
Sassafras, *Sassafras albidum*
Gray birch, *Betula populifolia*
Black birch, *Betula lenta*
American beech, *Fagus grandifolia*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion fifteen (15) feet on center, three (3) feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least six of the following selections:

Mountain laurel, *Kalmia latifolia*
Giant rhododendron, *Rhododendron maximum* (shaded areas only)
Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*
Silky dogwood, *Cornus amomum*
Arrowwood (southern), *Viburnum dentatum*
American cranberrybush, *Viburnum trilobum*
Mapleleaf viburnum, *Viburnum acerifolium*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Sweet pepperbush, *Clethra alnifolia*
Bayberry, *Myrica pennsylvanica*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

- (g) If any or all of the required plantings fail to survive at least two (2) years from the time that planting has been verified by DEM, the same plant species shall be replanted and maintained until such time that survival is maintained over two (2) full years.
- (h) 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 alterations are allowed in the restored wetland areas, or within other freshwater wetlands on the Property, without first obtaining a permit from DEM.

- (i) Upon stabilization of all disturbed areas all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) must be removed from the freshwater wetlands. Staked haybales, spread hay 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 site, all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.
 - (j) The above restoration work shall be completed prior to **October 1, 2011**.
- (4) Contact Mr. Howard Cook at DEM (401)222-1360 ext. 7161 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 representative of DEM.

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:

Fifteen-Thousand Dollars (\$15,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty (20) days of your receipt of this Notice of Violation (“NOV”). Payment shall be in the form of a certified check or money order made payable to the “General Treasury - Water & Air Protection Program Account” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the respondent in this 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 Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b),
- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2nd Floor
Providence, RI 02903

- (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 Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
 - (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
 - (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this 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 (v) and 42-17.6-4(b) and (c).
 - (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
 - (6) An original signed copy of this NOV is being forwarded to the towns of Smithfield and Lincoln 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 2-1-24, as amended.

- (7) This 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) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Mr. Howard Cook or Mr. Harold Ellis of the Office of Compliance and Inspection at (401) 222-4700 Exts. 7161 and 7401, respectively.

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

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____ 2011
the within Notice of Violation was forwarded to:

Stephen R. Archambault
195 Whipple Road
Smithfield, RI 02917

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C10-224

Respondent: Stephen R. Archambault

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 (2); Alteration of Perimeter Wetland; Fact C(3)(a)	Type I (\$10,000 Max. Penalty)*	Major	\$5,000	1 violation	\$5,000.00
D(1) and (2); Alteration of Riverbank Wetland; Fact C(3)(b)	Type I (\$10,000 Max. Penalty)*	Moderate	\$2,600	1 violation	\$2,600.00
D(1) and (2); Alteration of Riverbank Wetland; Fact C(3)(c)	Type I (\$10,000 Max. Penalty)*	Moderate	\$4,000	1 violation	\$4,000.00
D(1) and (2) Alteration of a Perimeter Wetland; Fact C(3)(d)	Type I (\$10,000 Max. Penalty)*	Minor	\$1,600	1 violation	\$1,600.00
D(1) and (2) Alteration of Swamp; Fact C(3)(e)	Type I (\$10,000 Max. Penalty)*	Minor	\$1,800	1 violation	\$1,800.00
SUB-TOTAL					\$15,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$15,000.00

PENALTY MATRIX WORKSHEET

CITATION: Alteration of Perimeter Wetland, Fact C(3)(a)
 VIOLATION NO.: D (1) and (2)

TYPE				
<u>X</u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE III <i>INCIDENTAL</i> 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 Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties				
(A) The extent to which the act or failure to act is out of compliance: The Respondent altered freshwater wetlands by clearing and filling (in the form of at least soil material and boulders) within 50-foot Perimeter Wetland (along the pond in the northeast corner of the property). The severity of the alteration to the wetland environment was determined to be of major significance to the regulatory program.				
(B) Environmental conditions: The 50-foot Perimeter Wetland along the edge of the pond was previously covered in sparse trees, shrubs, and field grasses (not lawn as presently exists). In addition, the pond was not lined with boulders.				
(C) Amount of the pollutant: Not relevant				
(D) Toxicity or nature of the pollutant: Not relevant				
(E) The duration of the violation: Unknown. DEM first identified the alteration on November 23, 2010.				
(F) The areal extent of the violation: The aerial extent of the violation is 15,000 ft ² .				
(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance: The Respondent failed to obtain the appropriate permit from DEM.				
(H) Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce: Not relevant.				
(I) The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable: The Respondent had complete control over the project and had an obligation to protect the wetlands on the property.				
(J) Any other factor(s) that may be relevant in determining the amount of a penalty: Not relevant.				
<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 \$5,000	\$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: Alteration of Riverbank Wetland, Fact C(3)(b)
 VIOLATION NO.: D (1) and (2)

TYPE				
<u>X</u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.		_____ TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		_____ TYPE III <i>INCIDENTAL</i> 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 Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties				
(A) The extent to which the act or failure to act is out of compliance: The Respondent altered freshwater wetlands by clearing, filling (in the form of at least soil material and boulders) within 100-foot Riverbank wetland, portions of which are also 50-foot Perimeter Wetland (along the west-southwest side of the property). The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) Environmental conditions: The 100-foot Riverbank Wetland (and 50-foot Perimeter Wetland) in this area was previously covered in sparse trees, shrubs, and field grasses.				
(C) Amount of the pollutant: Not relevant				
(D) Toxicity or nature of the pollutant: Not relevant				
(E) The duration of the violation: Unknown. DEM first identified the alteration on November 23, 2010.				
(F) The areal extent of the violation: The aerial extent of the violation is 13,000 ft ² .				
(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance: The Respondent failed to obtain the appropriate permit from DEM.				
(H) Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce: Not relevant.				
(I) The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable: The Respondent had complete control over the project and had an obligation to protect the wetlands on the property.				
(J) Any other factor(s) that may be relevant in determining the amount of a penalty: Not relevant.				
MAJOR		<u>X</u> 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	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$2,600	\$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: Alteration of Riverbank Wetland, Fact C(3)(c)
 VIOLATION NO.: D (1) and (2)

TYPE				
<u> X </u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.		_____ TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		_____ TYPE III <i>INCIDENTAL</i> 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 Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties				
(A) The extent to which the act or failure to act is out of compliance: The Respondent altered a wetland by clearing and filling (in the form of at least soil material and boulders) within 100-foot Riverbank wetland, portions of which are also 50-foot Perimeter Wetland (along the west-northwest side of the property). The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) Environmental conditions: The 100-foot Riverbank Wetland (and 50-foot Perimeter Wetland) in this area was previously covered in sparse trees, shrubs, and field grasses.				
(C) Amount of the pollutant: Not relevant				
(D) Toxicity or nature of the pollutant: Not relevant				
(E) The duration of the violation: Unknown. DEM first identified the alteration on November 23, 2010.				
(F) The areal extent of the violation: The aerial extent of the violation is 35,000 ft ² .				
(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance: The Respondent failed to obtain the appropriate permit from DEM.				
(H) Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce: Not relevant.				
(I) The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable: The Respondent had complete control over the project and had an obligation to protect the wetlands on the property.				
(J) Any other factor(s) that may be relevant in determining the amount of a penalty: Not relevant.				
MAJOR		<u> X </u> 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	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$4,000	\$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: Alteration of Perimeter Wetland, Fact C(3)(d)
 VIOLATION NO.: D (1) and (2)

TYPE				
<u>X</u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE III <i>INCIDENTAL</i> 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 Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties				
(A) The extent to which the act or failure to act is out of compliance: The Respondent altered a wetland by clearing and filling (in the form of at least soil material and boulders) within 50-foot Perimeter Wetland (along the western side of the property). The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) Environmental conditions: The 50-foot Perimeter Wetland in this area was previously covered in sparse trees, shrubs, and field grasses.				
(C) Amount of the pollutant: Not relevant				
(D) Toxicity or nature of the pollutant: Not relevant				
(E) The duration of the violation: Unknown. DEM first identified the alteration on November 23, 2010.				
(F) The areal extent of the violation: The aerial extent of the violation is 3,200 ft ² .				
(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance: The Respondent failed to obtain the appropriate permit from DEM.				
(H) Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce: Not relevant.				
(I) The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable: The Respondent had complete control over the project and had an obligation to protect the wetlands on the property.				
(J) Any other factor(s) that may be relevant in determining the amount of a penalty: Not relevant.				
MAJOR		MODERATE		<u>X</u> 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	\$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 \$1,600	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Alteration of Swamp, Fact C(3)(e)
 VIOLATION NO.: D (1) and (2)

TYPE				
<u>X</u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE III <i>INCIDENTAL</i> 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 Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties				
(A) The extent to which the act or failure to act is out of compliance: The Respondent altered a wetland by clearing within Swamp (in the northeast corner of the property). The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) Environmental conditions: The Swamp was previously forested throughout the cleared area.				
(C) Amount of the pollutant: Not relevant				
(D) Toxicity or nature of the pollutant: Not relevant				
(E) The duration of the violation: Unknown. DEM first identified the alteration on November 23, 2010.				
(F) The areal extent of the violation: The aerial extent of the violation is 1,800 ft ² .				
(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance: The Respondent failed to obtain the appropriate permit from DEM.				
(H) Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce: Not relevant.				
(I) The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable: The Respondent had complete control over the project and had an obligation to protect the wetlands on the property.				
(J) Any other factor(s) that may be relevant in determining the amount of a penalty: Not relevant.				
MAJOR		MODERATE		<u>X</u> 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	\$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 \$1,800	\$500 to \$1,000	\$100 to \$500