

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

**IN RE: Stephen R. Archambault
David R. Dexter**

FILE NO.: OCI-FW-17-105

NOTICE OF VIOLATION

A. Introduction

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

B. Administrative History

On 13 July 2011, the DEM issued a Notice of Violation (the “2011 NOV”) to Stephen R. Archambault for altering freshwater wetlands without a permit from the DEM on some of the lots that are the subject of this Notice of Violation (the “2019 NOV”). On 17 December 2014, the DEM and Mr. Archambault executed a Consent Agreement to resolve the 2011 NOV. The plan included with the Agreement clearly showed some of the wetlands that are the subject of the 2019 NOV. On 23 July 2015, the DEM performed an inspection to determine if the wetland restoration required under the Consent Agreement was completed. The DEM inspectors observed that additional work was undertaken within wetlands without a permit from the DEM. On 18 August 2015, a DEM representative spoke with David R. Dexter, the owner of one of the lots where the DEM inspectors observed that work was undertaken. Mr. Dexter informed the DEM representative that he performed some of the work. The DEM representative advised Mr. Dexter of the presence of the wetlands on the property and that no work can occur within the wetlands without a permit from the DEM. On 27 August 2015, during a follow up inspection, the DEM inspectors advised Mr. Archambault and Mr. Dexter of the presence of the wetlands on the property and that no work can occur within the wetlands without a permit from the DEM. On 24 May 2017, the DEM inspected the property to determine the extent of the additional work observed in 2015. The DEM inspectors observed that additional wetlands that were not altered at the time of the inspections in 2015 had been altered without a permit from the DEM. On 6 October 2017, the DEM issued a Notice of Intent to Enforce (“NIE”) to Respondents. On 12 October 2017 and 16 October 2017, the NIE was delivered to Mr. Archambault and Mr. Dexter, respectively. On 19 December 2017, the DEM met with Mr. Archambault and his consultant and attorney to discuss the NIE. Mr. Archambault agreed to submit documents to the DEM to support his argument that he is a farmer and that the activities undertaken on the property were allowed as they were farm related. Mr. Archambault also agreed that his consultant would submit a farm plan to the DEM, which would include restoration to some altered wetlands. On 15 March 2018, the DEM received a lease that was signed by Mr. Archambault and David Sleboda dba Sleboda Farms on 14 March 2018 for the lots owned by Mr. Archambault.

On 20 March 2018, the DEM received a farm plan for the lots owned by Mr. Archambault. The DEM's Division of Agriculture reviewed the lease and requested additional documents to determine whether Mr. Sleboda meets the definition of a farmer as that term is defined in Rhode Island's *Freshwater Wetlands Act*. On 17 April 2018, the DEM sent electronic correspondence to Mr. Archambault requesting tax records for Mr. Sleboda to support that Mr. Sleboda is a farmer and requesting revisions to the farm plan based on the DEM's preliminary review of the plan. On 4 September 2018, the DEM sent electronic correspondence to Mr. Archambault again requesting the documents. On 5 September 2018, the DEM received electronic correspondence from Mr. Archambault; however, as of the date of the 2019 NOV, the DEM has not received the requested documents. The DEM has determined that even if Mr. Sleboda is a farmer, the lease was signed after the wetlands were altered and, more significantly, even if the lease had been signed prior to the alterations, most of the work undertaken in the freshwater wetlands required the submission of an application to the DEM for a permit and the approval from the DEM before the wetlands were altered, neither of which occurred.

C. Facts

- (1) The property is located approximately 280 feet southeast of Whipple Road, Utility Pole No. 26, approximately 1,700 feet south of the intersection of Whipple Road and Lantern Road, Assessor's Plat 42, Lot 14A ("Lot 14A"), Lot 23 ("Lot 23"), Lot 36 ("Lot 36") and Lot 226 ("Lot 226"), all in the Town of Smithfield, Rhode Island and Plat 44, Lot 10 ("Lot 10"), Plat 44, Lot 217 ("Lot 217") and Plat 45, Lot 461 ("Lot 461"), all in the Town of Lincoln, Rhode Island (collectively, the "Properties").
- (2) Stephen R. Archambault and Marie G. Archambault own Lot 14A.
- (3) The Mario Ciotola and Jenelita Ciotola Irrevocable Trust own Lot 23.
- (4) David R. Dexter and Barbara M. Dexter own Lot 36.
- (5) Stephen R. Archambault owns Lot 226 and Lot 10.
- (6) Bruce Stoeckel and Valerie Stoeckel own Lot 217.
- (7) Angellin LLC owns Lot 461.
- (8) On 26 October 1994, the DEM issued an Insignificant Alteration Permit (Number 94-0474) to Roberta Archambault to alter freshwater wetlands to construct a house.
- (9) On 24 October 2002, the DEM issued an Insignificant Alteration Permit (Number 02-0429) to Stephen R. Archambault to alter freshwater wetlands to remove several structures, relocate one structure and construct a new house with a driveway, septic system and well.

- (10) On 25 April 2008, the DEM issued a Permit to Alter Wetlands (Number 06-0111) to David R. Dexter to alter freshwater wetlands to construct an access road and a house.
- (11) On 31 December 2012, the DEM issued a Permit to Alter Wetlands (Number 11-0167) to Angellin, LLC to alter freshwater wetlands to construct a residential subdivision.
- (12) On 13 July 2011, the DEM issued a Notice of Violation (the “2011 NOV”) to Stephen R. Archambault for altering freshwater wetlands without a permit from the DEM on Lot 14A and Lot 10.
- (13) On 17 December 2014, the DEM and Stephen R. Archambault executed a Consent Agreement to resolve the 2011 NOV.
- (14) The documents and plans associated with the permits described in subsections C(8) through C(11) above and the documents and plans associated with the 2011 NOV and Agreement described in subsections C(12) and C(13) above identify the type and location of the wetlands on the Properties.
- (15) On 24 May 2017, the DEM inspected the Properties. The inspection revealed the following:
 - (a) Clearing, soil disturbances and filling (including at least soil, stones, boulders and stumps) within Swamp and a River (Angell Brook) including overlapping Riverbank Wetlands associated with Angell Brook. These activities have resulted in the alteration of approximately 0.56 acres (24,300 square feet) of freshwater wetland;
 - (b) Clearing, soil disturbances and filling (with at least soil and stone) within Riverbank Wetlands associated with Angell Brook and Perimeter Wetlands associated with Swamp. These activities have resulted in the alteration of approximately 2.57 acres of freshwater wetland;
 - (c) Clearing and soil disturbances within Swamp and River (West River) including overlapping Riverbank Wetlands associated with the West River. These activities have resulted in the alteration of approximately 4.5 acres of freshwater wetland;

- (d) Clearing, stumping, grubbing, filling (with at least boulders and soil), and creating soil disturbances within Swamp, Perimeter Wetland and Riverbank Wetland to construct an access road. These activities resulted in the alteration of approximately 0.16 acres (7,000 square feet) of freshwater wetland;
 - (e) Dredging and disturbances within a Pond. This activity resulted in the alteration of approximately 0.5 acres of freshwater wetland;
 - (f) Clearing within Riverbank Wetlands (associated with Angell River and lower West River) and Perimeter Wetland. These activities have resulted in the alteration of approximately 1.1 acres of freshwater wetland; and
 - (g) Failure to follow best management practices including at least: harvesting and soil disturbances within Swamp, 2 unauthorized river crossings (over the West River), failure to use erosion controls, and failure to submit a Notice of Intent to Cut to the DEM. These activities have occurred within approximately 8 acres.
- (16) On 20 March 2018, the DEM received a plan (the “Plan”) that was prepared by Natural Resources Services, Inc. on behalf of Stephen R. Archambault. The first sheet of the Plan is titled *Existing Conditions and Wetland Restoration Plan DEM File OCI-FW-17-105 Stephen R. Archambault 195 Whipple Road A.P. 42, Lots 14A, 36 & 226 A.P. 44, Lot 10 Smithfield & Lincoln, RI*, and the second sheet of the Plan is titled *Farm Plan DEM File OCI-FW-17-105 Stephen R. Archambault 195 Whipple Road A.P. 42, Lots 14A, 36 & 226 A.P. 44, Lot 10 Smithfield & Lincoln, RI*.
- (17) The activities described in subsection C(15) above were not exempt in accordance with Rule 6.00 [recently amended to Part 1.6] of the Rhode Island Code of Regulations titled *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1)* (the “Freshwater Wetlands Regulations”).
- (18) Respondents did not receive a permit from the DEM to alter the freshwater wetlands on the Properties in the areas described in subsection C(15) above.

- (19) Respondents are jointly responsible for the unauthorized alterations described in subsections C(15)(a), (b) and (c) and (f) above.
- (20) Mr. Archambault is solely responsible for the unauthorized alterations described in subsections C(15)(d) and (e) above.
- (21) Mr. Dexter is solely responsible for the unauthorized alterations described in subsection C(15)(g) 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) **Freshwater Wetlands Regulations, Rule 5.01 [recently amended to Part 1.5(A)(1)]** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (3) **Freshwater Wetlands Regulations, Rule 6.02D [recently amended to Part 1.6(B)(1)(d)]** – requiring that cutting or clearing of vegetation within wetlands be performed using best management practices and that a notice of intent to cut be filed with the DEM.

E. Order

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

- (1) Cease and desist 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

- (3) 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 the DEM, additional soil erosion and sediment controls

must be installed on-site, as deemed necessary, to protect all freshwater wetlands.

- (4) Remove all unauthorized fill from the wetlands down to original grade to match the surface elevations of the undisturbed surrounding areas. All fill that is removed must be deposited in an appropriate upland location, outside of all freshwater wetlands. The fill includes, but may not be limited to, the following
 - (a) Soil, stones, boulders and stumps from the Swamp and Angell Brook, including rocks and boulders lining the river channel identified in subsection C(15)(a) above;
 - (b) Soil and stones from the Perimeter Wetland and Riverbank Wetland identified in subsection C(15)(b) above;
 - (c) Boulders, rocks and soil, including sediment within the wetlands identified in subsection C(15)(d) above; and
 - (d) River crossings identified in subsection C(15)(g) above.
- (5) Following fill removal, re-establishment of proper wetland surface grades, and appropriate stabilization of restored wetland areas, plant trees and shrubs within the Perimeter Wetland and Riverbank Wetland identified in subsections C(15)(b) and (d) above.

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

Red maple, *Acer rubrum*
White pine, *Pinus strobus*
Box elder, *Acer negundo*
Black Cherry, *Prunus serotina*
White ash, *Fraxinus americana*
White oak, *Quercus alba*
Northern red oak, *Quercus rubra*
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, 5 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:

Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*
Silky dogwood, *Cornus amomum*
Arrowwood (southern), *Viburnum dentatum*
American cranberrybush, *Viburnum trilobum*
Mapleleaf viburnum, *Viburnum acerifolium*
Inkberry, *Ilex glabra*
Highbush blueberry, *Vaccinium corymbosum*
Sweet pepperbush, *Clethra alnifolia*
Bayberry, *Myrica pennsylvanica*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

- (6) If any of the required plantings fail to survive at least 2 full growing seasons from the time they have been planted, replant and maintain the same plant species until such time that survival is maintained over 2 full growing seasons.
- (7) All areas of disturbed surface soils shall be loamed (if necessary), seeded with a wetland seed mix (within Swamp) or wildlife conservation grass seed mixture (within Perimeter Wetland and Riverbank Wetland), and covered with a thick mat of loose straw mulch, which is free of any contaminants that could promote the spread of invasive plant species. If necessary, very steep or extremely unstable surfaces must be covered with an appropriate erosion control matting of some type (e.g., excelsior matting or jute mesh).
- (8) 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 Properties, without first obtaining a permit from the DEM, unless the activity is exempt under the Freshwater Wetlands Regulations.
- (9) Upon stabilization of all disturbed areas, all non-biodegradable erosion and sedimentation controls must be removed from the freshwater wetlands. 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, outside of all freshwater wetlands.
- (10) The above restoration work shall be completed by **31 October 2019**.

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:

(a) Stephen R. Archambault and David R. Dexter for violations associated with subsections C(15)(a), (b), (c) and (f)

\$20,000

(b) Stephen R. Archambault for violations associated with subsections C(15)(d) and (e)

\$40,000

(c) David R. Dexter for violations associated with subsection C(15)(g)

\$10,000

(2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to the DEM within 30 days of your receipt of the 2019 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 Respondents in the 2019 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 the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the 2019 NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

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

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of the Rhode Island Code of Regulations titled *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:
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 the DEM's Administrative Adjudication Division as to each violation alleged in the written 2019 NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the 2019 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 2019 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 2019 NOV may subject each respondent to additional civil and/or criminal penalties.

- (6) An original signed copy of the 2019 NOV is being forwarded to the Town of Smithfield, Rhode Island and the Town of Lincoln, 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 2-1-24, as amended.
- (7) The 2019 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 of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to me at (401) 222-4700 Exts. 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, Administrator
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____ 2019
the within Notice of Violation was forwarded to:

Stephen R. Archambault
195 Whipple Road
Smithfield, RI 02917

David R. Dexter
P.O. Box 756
Chepachet, RI 02814

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: OCI-FW-17-105

Respondents: Stephen R. Archambault and David R. Dexter

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 (15)(a)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) Wetland Alterations – Fact C (15)(b)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) Wetland Alterations – Fact C (15)(c)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) Wetland Alterations – Fact C (15)(d)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) Wetland Alterations – Fact C (15)(e)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) Wetland Alterations – Fact C (15)(f)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (3) Wetland Alterations – Fact C (15)(g)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
SUB-TOTAL					\$70,000

*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 Respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

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 = \$70,000

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations
 VIOLATION NO.: D (1) and D (2) – Fact C (15)(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.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <p>(1) The extent to which the act or failure to act was out of compliance: Stephen Archambault altered freshwater wetlands by at least clearing, soil disturbances and filling (including at least soil, stones, boulders and stumps) within Swamp and a River (Angell Brook) including overlapping Riverbank Wetlands associated with Angell Brook. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(2) Environmental conditions: Prior to the alterations, the wetlands were forested and undisturbed. Vegetation noted within the clearing and adjacent undisturbed areas was diverse and included at least red maple, beech, winterberry, highbush blueberry, arrow-wood, and cinnamon fern, false hellebore, tussock sedge, carex sp., jack-in-the-pulpit, iris, golden ragwort, skunk cabbage, and sphagnum moss. The two rivers and the associated swamps and buffers are considered valuable riparian corridors. The DEM inspectors observed a turkey, deer tracks, a red-tailed hawk (call), a green frog, and numerous songbirds in the remaining forest fringe along the rivers. On 24 May 2017, the DEM’s inspection revealed that some of the wetlands described in Factor (1) above were naturally recovering.</p> <p>(3) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(5) Duration of the violation: Full duration unknown – at least approximately 4 years. The DEM’s review of aerial photographs showed that some of the alterations were present as of 6 May 2015.</p> <p>(6) Areal extent of the violation: Approximately .56 acres (24,300 square feet).</p>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Mr. Archambault did not take reasonable and appropriate steps to prevent the noncompliance. On 13 July 2011, the DEM issued a Notice of Violation (2011 NOV) to Mr. Archambault for altering wetlands without a permit from the DEM. On 17 December 2014, the DEM and Mr. Archambault executed a Consent Agreement to resolve the 2011 NOV. The plan included with the Agreement clearly showed the wetlands described in Factor (1) above. Mr. Archambault proceeded to alter the wetlands described in Factor (1) above without applying for a permit from the DEM. On 20 March 2018, the DEM received a farm plan and a lease that was signed by Mr. Archambault and David Sleboda on 14 March 2018. A preliminary review of the plan showed no proposed restoration of the River and Swamp described in Factor (1) above and some proposed restoration of the Riverbank Wetlands described in Factor (1) above; however, revisions to the plan were requested before the DEM could perform a detailed review. The DEM's Division of Agriculture reviewed the lease and requested additional documents to determine whether Mr. Sleboda met the definition of a farmer as that term is defined in Rhode Island's *Freshwater Wetlands Act*. As of the date of the 2019 NOV, Mr. Archambault has not submitted the additional documents requested by the DEM's Division of Agriculture, has not submitted a revised restoration plan to the DEM to address the DEM's preliminary comments or restored the wetlands.
- (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:** On 13 July 2011, the DEM issued a Notice of Violation (2011 NOV) to Mr. Archambault for alterations to wetlands. On 17 December 2014, the DEM and Mr. Archambault executed a Consent Agreement to resolve the 2011 NOV. The Agreement required restoration of the wetlands by 1 June 2015. As of the date of the 2019 NOV, Mr. Archambault has failed to restore the wetlands in accordance with the Agreement.
- (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:** Archambault had complete control over the project, and the violation was foreseeable. Mr. Archambault had knowledge that wetlands were present and knowledge of the Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The DEM has determined that even if Mr. Sleboda is a farmer, the lease was signed after the wetlands were altered and, more significantly, even if the lease had been signed prior to the alterations, some of the work undertaken in the freshwater wetlands described in Factor (1) above required the submission of an application to the DEM for a permit and the approval from the DEM before the wetlands were altered, neither of which occurred.

<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 (15)(b)

TYPE		
<p style="text-align: center;">___X___ 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		
<small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Stephen R. Archambault altered freshwater wetlands by at least clearing, soil disturbances and filling (with at least soil and stone) within Riverbank Wetlands associated with Angell Brook and Perimeter Wetlands associated with Swamp. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: Prior to the alterations, the wetlands were forested and undisturbed. Vegetation noted within the clearing and adjacent undisturbed areas was diverse and included at least red maple, beech, winterberry, highbush blueberry, arrow-wood, and cinnamon fern, false hellebore, tussock sedge, carex sp., jack-in-the-pulpit, iris, golden ragwort, skunk cabbage, and sphagnum moss. The two rivers and the associated swamps and buffers are considered valuable riparian corridors. The DEM inspectors observed a turkey, deer tracks, a red-tailed hawk (call), a green frog, and numerous songbirds in the remaining forest fringe along the rivers. On 24 May 2017, the DEM’s inspection revealed that some of the wetlands described in Factor (1) above were naturally recovering. (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 approximately 4 years. The DEM’s review of aerial photographs showed that some of the alterations were present as of 6 May 2015. (6) Areal extent of the violation: Approximately 2.57 acres. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Mr. Archambault did not take reasonable and appropriate steps to prevent the noncompliance. On 13 July 2011, the DEM issued a Notice of Violation (2011 NOV) to Mr. Archambault for altering wetlands without a permit from the DEM. On 17 December 2014, the DEM and Mr. Archambault executed a Consent Agreement to resolve the 2011 NOV. The plan included with the Agreement clearly showed the wetlands described in Factor (1) above. Mr. Archambault proceeded to alter the wetlands described in Factor (1) above without applying for a permit from the DEM. On 20 March 2018, the DEM received a farm plan and a lease that was signed by Mr. Archambault and David Sleboda on 14 March 2018. A preliminary review of the plan showed no proposed restoration of the wetlands described in Factor (1) above (only a permanently maintained 15-foot grass buffer); however, revisions to the plan were requested before the DEM could perform a detailed review. The DEM's Division of Agriculture reviewed the lease and requested additional documents to determine whether Mr. Sleboda met the definition of a farmer as that term is defined in Rhode Island's *Freshwater Wetlands Act*. As of the date of the 2019 NOV, Mr. Archambault has not submitted the additional documents requested by the DEM's Division of Agriculture, has not submitted a revised restoration plan to the DEM to address the DEM's preliminary comments or restored the wetlands.
- (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:** On 13 July 2011, the DEM issued a Notice of Violation (2011 NOV) to Mr. Archambault for alterations to wetlands. On 17 December 2014, the DEM and Mr. Archambault executed a Consent Agreement to resolve the 2011 NOV. The Agreement required restoration of the wetlands by 1 June 2015. As of the date of the 2019 NOV, Mr. Archambault has failed to restore the wetlands in accordance with the Agreement.
- (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:** Mr. Archambault had complete control over the project, and the violation was foreseeable. Mr. Archambault had knowledge that wetlands were present and knowledge of the Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The DEM has determined that even if Mr. Sleboda is a farmer, the lease was signed after the wetlands were altered and, more significantly, even if the lease had been signed prior to the alterations, some of the work undertaken in the freshwater wetlands described in Factor (1) above required the submission of an application to the DEM for a permit and the approval from the DEM before the wetlands were altered, neither of which occurred.

<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 (15)(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		
<small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by at least clearing and soil disturbances within Swamp and River (West River) including overlapping Riverbank Wetlands associated with the West River. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: Prior to the alterations, the wetlands were forested and undisturbed. Vegetation noted within the clearing and adjacent undisturbed areas was diverse and included at least red maple, beech, winterberry, highbush blueberry, arrow-wood, and cinnamon fern, false hellebore, tussock sedge, carex sp., jack-in-the-pulpit, iris, golden ragwort, skunk cabbage, and sphagnum moss. The two rivers and the associated swamps and buffers are considered valuable riparian corridors. The DEM inspectors observed a turkey, deer tracks, a red-tailed hawk (call), a green frog, and numerous songbirds in the remaining forest fringe along the rivers. On 24 May 2017, the DEM’s inspection revealed that some of the wetlands described in Factor (1) above were naturally recovering. (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 approximately 2½ years. The DEM’s review of aerial photographs showed that some of the alterations were present as of August 2016. (6) Areal extent of the violation: Approximately 4.5 acres. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the noncompliance. Respondents altered the wetlands described in Factor (1) above without applying for a permit from the DEM. On 20 March 2018, the DEM received a farm plan and a lease that was signed by Stephen R. Archambault and David Sleboda on 14 March 2018. A preliminary review of the plan showed that it did not identify the full extent of the alterations to the wetlands described in Factor (1) above and did not propose any restoration of the wetlands; however, revisions to the plan were requested before the DEM could perform a detailed review. The DEM's Division of Agriculture reviewed the lease and requested additional documents to determine whether Mr. Sleboda met the definition of a farmer as that term is defined in Rhode Island's *Freshwater Wetlands Act*. As of the date of the 2019 NOV, Mr. Archambault has not submitted the additional documents requested by the DEM's Division of Agriculture, has not submitted a revised restoration plan to the DEM to address the DEM's preliminary comments or restored the wetlands.
- (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:** On 13 July 2011, the DEM issued a Notice of Violation (2011 NOV) to Mr. Archambault for alterations to wetlands. On 17 December 2014, the DEM and Mr. Archambault executed a Consent Agreement to resolve the 2011 NOV. The Agreement required restoration of the wetlands by 1 June 2015. As of the date of the 2019 NOV, Mr. Archambault has failed to restore the wetlands in accordance with the Agreement.
- (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:** Respondents had complete control over the project, and the violation was foreseeable. On 18 August 2015 and 27 August 2015, DEM inspectors advised one or both Respondents of the presence of the wetlands described in Factor (1) above and that no work can occur within the wetlands without a permit from the DEM. Respondents had knowledge that wetlands were present and knowledge of the Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The DEM has determined that even if Mr. Sleboda is a farmer, the lease was signed after the wetlands were altered and, more significantly, even if the lease had been signed prior to the alterations, most of the work undertaken in the freshwater wetlands described in Factor (1) above required the submission of an application to the DEM for a permit and the approval from the DEM before the wetlands were altered, neither of which occurred.

<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 (15)(d)

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.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Stephen R. Archambault altered freshwater wetlands by at least clearing, stumping, grubbing, filling (with at least boulders and soil), and creating soil disturbances within Swamp, Perimeter Wetland and Riverbank Wetland to construct an access road. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: Prior to the alterations, the wetlands were forested and undisturbed. Vegetation noted within the clearing and adjacent undisturbed areas was diverse and included at least red maple, beech, winterberry, highbush blueberry, arrow-wood, and cinnamon fern, false hellebore, tussock sedge, carex sp., jack-in-the-pulpit, iris, golden ragwort, skunk cabbage, and sphagnum moss. The two rivers and the associated swamps and buffers are considered valuable riparian corridors. The DEM inspectors observed a turkey, deer tracks, a red-tailed hawk (call), a green frog, and numerous songbirds in the remaining forest fringe along the rivers. On 24 May 2017, the DEM’s inspection revealed that some of the wetlands described in Factor (1) above were naturally recovering, however, no recovery is occurring in the wetlands that were filled. (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 approximately 2½ years. The DEM’s review of aerial photographs showed that some of the alterations were present as of October 2016. (6) Areal extent of the violation: Approximately 0.16 acres (7,000 square feet). 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Mr. Archambault did not take reasonable and appropriate steps to prevent the noncompliance. Mr. Archambault altered the wetlands described in Factor (1) above without applying for a permit from the DEM. On 20 March 2018, the DEM received a farm plan and a lease that was signed by Mr. Archambault and David Sleboda on 14 March 2018. A preliminary review of the plan showed no restoration to the wetlands; however, revisions to the plan were requested before the DEM could perform a detailed review. The DEM's Division of Agriculture reviewed the lease and requested additional documents to determine whether Mr. Sleboda met the definition of a farmer as that term is defined in Rhode Island's *Freshwater Wetlands Act*. As of the date of the 2019 NOV, Mr. Archambault has not submitted the additional documents requested by the DEM's Division of Agriculture, has not submitted a revised restoration plan to the DEM to address the DEM's preliminary comments or restored the wetlands.
- (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:** On 13 July 2011, the DEM issued a Notice of Violation (2011 NOV) to Mr. Archambault for alterations to wetlands. On 17 December 2014, the DEM and Mr. Archambault executed a Consent Agreement to resolve the 2011 NOV. The Agreement required restoration of the wetlands by 1 June 2015. As of the date of the 2019 NOV, Mr. Archambault has failed to restore the wetlands in accordance with the Agreement.
- (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:** Mr. Archambault had complete control over the project, and the violation was foreseeable. Mr. Archambault had knowledge that wetlands were present and knowledge of the Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The DEM has determined that even if Mr. Sleboda is a farmer, the lease was signed after the wetlands were altered and, more significantly, even if the lease had been signed prior to the alterations, some of the work undertaken in the freshwater wetlands described in Factor (1) above required the submission of an application to the DEM for a permit and the approval from the DEM before the wetlands were altered, neither of which occurred.

<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 (15)(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 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Stephen R. Archambault altered freshwater wetlands by dredging and disturbances within a Pond. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: Prior to the alterations, the Pond was undisturbed. (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: The date the dredging occurred is unknown – the DEM inspectors observed piles of dredged material during an inspection on 28 April 2017. The pond had not been dredged as of the DEM’s prior inspection on 27 August 2015. (6) Areal extent of the violation: Approximately 0.5 acres. 		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Mr. Archambault did not take reasonable and appropriate steps to prevent the noncompliance. Mr. Archambault altered the wetlands described in Factor (1) above without applying for a permit from the DEM. No mitigation can be done to restore the wetlands.
- (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:** On 13 July 2011, the DEM issued a Notice of Violation (2011 NOV) to Mr. Archambault for alterations to wetlands. On 17 December 2014, the DEM and Mr. Archambault executed a Consent Agreement to resolve the 2011 NOV. The Agreement required restoration of the wetlands by 1 June 2015. As of the date of the 2019 NOV, Mr. Archambault has failed to restore the wetlands in accordance with the Agreement.
- (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:** Mr. Archambault had complete control over the project, and the violation was foreseeable. Mr. Archambault had knowledge that wetlands were present and knowledge of the Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** On 20 March 2018, the DEM received a farm plan and a lease that was signed by Mr. Archambault and David Sleboda. The DEM's Division of Agriculture reviewed the lease and requested additional documents to determine whether Mr. Sleboda met the definition of a farmer as that term is defined in Rhode Island's *Freshwater Wetlands Act*. As of the date of the 2019 NOV, Mr. Archambault has not submitted the additional documents requested by the DEM's Division of Agriculture. The DEM has determined that even if Mr. Sleboda is a farmer, the lease was signed after the wetlands were altered and, more significantly, even if the lease had been signed prior to the alterations, the alterations to the freshwater wetlands described in Factor (1) above required the submission of an application to the DEM for a permit and the approval from the DEM before the wetlands were altered, neither of which occurred.

<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 (15)(f)

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.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by at least clearing within Riverbank Wetlands (associated with Angell River and lower West River) 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: Prior to the alterations, the wetlands were forested and undisturbed. Vegetation noted within the clearing and adjacent undisturbed areas was diverse and included at least red maple, beech, winterberry, highbush blueberry, arrow-wood, and cinnamon fern, false hellebore, tussock sedge, carex sp., jack-in-the-pulpit, iris, golden ragwort, skunk cabbage, and sphagnum moss. The two rivers and the associated swamps and buffers are considered valuable riparian corridors. The DEM inspectors observed a turkey, deer tracks, a red-tailed hawk (call), a green frog, and numerous songbirds in the remaining forest fringe along the rivers. On 24 May 2017, the DEM’s inspection revealed that some of the wetlands described in Factor (1) above were naturally recovering. (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 approximately 2 years. The DEM identified the alterations during an inspection on 24 May 2017. (6) Areal extent of the violation: Approximately 1.1 acres. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the noncompliance. Respondents altered the wetlands described in Factor (1) above without applying for a permit from the DEM. On 20 March 2018, the DEM received a farm plan and a lease that was signed by Stephen R. Archambault and David Sleboda on 14 March 2018. A preliminary review of the plan showed no restoration to the wetlands; however, revisions to the plan were requested before the DEM could perform a detailed review. The DEM's Division of Agriculture reviewed the lease and requested additional documents to determine whether Mr. Sleboda met the definition of a farmer as that term is defined in Rhode Island's *Freshwater Wetlands Act*. As of the date of the 2019 NOV, Mr. Archambault has not submitted the additional documents requested by the DEM's Division of Agriculture, has not submitted a revised restoration plan to the DEM to address the DEM's preliminary comments or restored the wetlands.
- (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:** On 13 July 2011, the DEM issued a Notice of Violation (2011 NOV) to Mr. Archambault for alterations to wetlands. On 17 December 2014, the DEM and Mr. Archambault executed a Consent Agreement to resolve the 2011 NOV. The Agreement required restoration of the wetlands by 1 June 2015. As of the date of the 2019 NOV, Mr. Archambault has failed to restore the wetlands in accordance with the Agreement.
- (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:** Respondents had complete control over the project, and the violation was foreseeable. On 18 August 2015 and 27 August 2015, DEM inspectors advised one or both Respondents of the presence of the wetlands described in Factor (1) above and that no work can occur within the wetlands without a permit from the DEM. Respondents had knowledge that wetlands were present and knowledge of the Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The DEM has determined that even if Mr. Sleboda is a farmer, the lease was signed after the wetlands were altered and, more significantly, even if the lease had been signed prior to the alterations, some of the alterations to the freshwater wetlands described in Factor (1) above required the submission of an application to the DEM for a permit and the approval from the DEM before the wetlands were altered, neither of which occurred.

<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 (3) – Fact C (15)(g)

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><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: David R. Dexter failed to follow best management practices including at least: harvesting and soil disturbances within Swamp, 2 unauthorized river crossings (over the West River), failure to use erosion controls, and failure to submit a Notice of Intent to Cut to the DEM. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: Prior to the alterations, the wetlands were forested and undisturbed. Vegetation noted within the clearing and adjacent undisturbed areas was diverse and included at least red maple, beech, winterberry, highbush blueberry, arrow-wood, and cinnamon fern, false hellebore, tussock sedge, carex sp., jack-in-the-pulpit, iris, golden ragwort, skunk cabbage, and sphagnum moss. The two rivers and the associated swamps and buffers are considered valuable riparian corridors. The DEM inspectors observed a turkey, deer tracks, a red-tailed hawk (call), a green frog, and numerous songbirds in the remaining forest fringe along the rivers. On 24 May 2017, the DEM’s inspection revealed that some of the wetlands described in Factor (1) above were naturally recovering. (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 – the DEM first observed the noncompliance during an inspection on 23 July 2015. The DEM inspections on 28 April 2017 and 24 May 2017 showed noncompliance to more wetlands. (6) Areal extent of the violation: Approximately 8.0 acres. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Mr. Dexter did not take reasonable and appropriate steps to prevent the noncompliance. Mr. Dexter altered the wetlands without following best management practices for cutting and harvesting of wood within freshwater wetlands.
- (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:** Mr. Dexter had complete control over the project, and the violation was foreseeable. On 18 August 2015, a DEM inspector spoke with Mr. Dexter and advised him to cease working in wetlands. Mr. Dexter agreed to comply. On 27 August 2015, Mr. Dexter was again advised by a DEM inspector during an inspection to cease working in wetlands. Most of the cutting in wetlands occurred after August 2015. Mr. Dexter had knowledge that wetlands were present and, as a logger, had knowledge of the Freshwater Wetland Regulations and the requirements to follow best management practices. During the 18 August 2015 telephone call, Mr. Dexter informed the DEM inspector that he used temporary crossings to cross the river and selectively cut; however, the DEM's observations on 23 July 2015 did not support his statements and there was no evidence that best management practices were followed during the inspections on 28 April 2017 and 24 May 2017.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** During the 18 August 2015 telephone conversation with the DEM inspector, Mr. Dexter stated that he has been logging for over 40 years. Also, on 9 October 2007, the DEM issued a Permit to Alter Wetlands (Number 06-0111) to Mr. Dexter to alter some of the freshwater wetlands that are the subject of the 2019 NOV to construct an access road and a house, so he had knowledge of the presence of the wetlands and the need to obtain a permit from the DEM prior to altering wetlands.

<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