

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

IN RE: Walter W. Armstrong

FILE NO.: FW C07-0293

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 jurisdiction of DEM.

B. Administrative History

On April 14, 2009 DEM issued an informal written notice to the Respondent for the violations. On April 27, 2009 DEM received a letter from the Respondent’s attorney requesting additional time to evaluate the requirements in the notice. On October 29, 2010 DEM issued a letter to the Respondent’s attorney stating that DEM had not received a response to the notice. The Respondent failed to respond to the letter or comply with the notice.

C. Facts

- (1) The property is located at 1 Almy Street, Assessor’s Plat 28, Lot 91 in the town of Johnston, Rhode Island (the “Property”).
- (2) The Respondent owns the Property. The Respondent acquired the Property on November 15, 1993.
- (3) DEM inspected the Property on September 5, 2007 and November 29, 2007. The inspections revealed the following unauthorized alterations of freshwater wetlands:
 - (a) Clearing, filling (in the form of soil material, boulders, rocks and stones, and various landscape features), grading, and creating soil disturbance within a Swamp, which is also within the 200-foot Riverbank Wetland (“RBW”), 100-foot RBW, and zones of the 100-year Floodplain (“FP”). These activities have resulted in the unauthorized alteration of approximately 2,400 square feet of freshwater wetland.
 - (b) Clearing, filling (in the form of soil material, crushed stone, rocks, boulders, wood chips, various structures, fencing, and other various materials), grading, and/or creating soil disturbance within the 200-foot RBW, portions of which are also within the 100-foot RBW and 50-foot

Perimeter Wetland (“PW”), and all of which is encompassed by zones of the 100-year FP. These activities have resulted in the unauthorized alteration of approximately 50,525 square feet (approximately 1.16 acres) of freshwater wetland.

- (c) Clearing, grading and creating soil disturbance within the 50-foot PW, all of which is also encompassed by zones of the 100-year FP. These activities have resulted in the unauthorized alteration of approximately 3,150 square feet of freshwater wetland.
 - (d) Clearing, filling (in the form of soil material and fencing material), grading, and/or creating soil disturbance within a second 50-foot PW, portions of which include a second 100-foot RBW, and all of which is also encompassed by zones of the 100-year FP. These activities have resulted in the unauthorized alteration of approximately 5,900 square feet of freshwater wetland.
 - (e) Filling (in the form of soil material, crushed stone, rocks, structures, fencing, and other various materials), and grading within zones of the 100-year FP which lie outside of other freshwater wetlands on the Property. These activities have resulted in the unauthorized alteration of approximately 12,800 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 (effective date March 18, 1994), Rule 7.01** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (3) **DEM’s Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act (effective date June 1, 2007), 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 existing altered or improved 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, if necessary) 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 DEM, additional soil erosion and sediment controls must be installed, as deemed necessary, to protect any and all freshwater wetlands.
- (b) Remove all unauthorized fill material from the Swamp, including but not limited to soil material, lawn (turf) components, all components of the stone wall, and any and all landscaping improvements. All unauthorized fill material must be removed down to an elevation that matches the adjacent undisturbed Swamp grades, to a point where original native soils are encountered. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
- (c) Following fill removal, the Swamp must be restored to the condition that existed prior to the unauthorized alterations. If, following fill removal, an adequate organic soil substrate is not present, the Swamp must be further excavated and an appropriate amount of high-organic plantable soil (6-inches minimum) must be applied to re-establish the Swamp elevations and hydrologic regime to match the adjacent undisturbed Swamp.
- (d) All fill material, structures, landscaping amenities (including pools and man-made “ponds”) and other site improvements (e.g. portions of stone walls) must be removed from the 50-foot PW, 100-foot RBW, 200-foot RBW, and 100-year FP in the areas that are the subject of the NOV. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.

- (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) Following the completion of the restoration work described in Section E(2)(b) and (c) above, plant trees and shrubs within the Swamp. The trees and shrubs to be planted in these locations must be obtained from nursery stock that has been raised in hydric conditions. If necessary, to improve survivability, required tree and shrub plantings may be installed within small raised mounds (slightly elevated only) of high-organic plantable soil material (only).

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

Red maple, *Acer rubrum*
Silver Maple, *Acer saccharinum*
Black gum, *Nyssa sylvatica*
Green ash, *Fraxinus pennsylvanica*
Swamp white oak, *Quercus bicolor*
Pin oak, *Quercus palustris*
American elm, *Ulmus americana*
Weeping willow, *Salix babylonica*
Black willow, *Salix nigra*
Yellow birch, *Betula allegheniensis*

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

Red osier dogwood, *Cornus stolonifera*
Elderberry, *Sambucus canadensis*
Northern arrowwood, *Viburnum recognitum*
Winterberry, *Ilex verticillata*
Highbush blueberry, *Vaccinium corymbosum*
Spicebush, *Lindera benzoin*
Swamp azalea, *Rhododendron viscosum*
Speckled alder, *Alnus rugosa*
Smooth alder, *Alnus serrulata*
Red chokeberry, *Aronia arbutifolia*
Buttonbush, *Cephalanthus occidentalis*
Maleberry, *Lyonia lingustrina*
Swamp Rose, *Rosa palustris*

- (g) Following the completion of the restoration work described in Section E(2)(d) and (e) above, replant the 50 foot PW, 100 foot RBW, and 200 foot RBW with trees and shrubs.

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, ten (10) 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 five (5) 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*

- (h) 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.

- (i) All areas of disturbed surface soils shall be loamed (if necessary), seeded with a wetland seed mix (within the Swamp) or a wildlife conservation grass seed mixture (within PW and RBW areas), 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.
 - (j) 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.
 - (k) All required restoration work within the Swamp must be completed during the low flow period (July 1 through October 31).
 - (l) 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 wetland. 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.
 - (m) The above restoration work shall be completed prior to **April 30, 2012**.
- (3) Contact Mr. Bruce Ahern at DEM (401)222-1360 ext. 7703 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 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:

Three Thousand Seven Hundred Fifty Dollars (\$3,750.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM's Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the DEM within twenty (20) days of your receipt of this Notice of Violation ("NOV"). Payment shall be in the form of a certified check, cashiers 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 town of Johnston 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. Bruce Ahern or Mr. Harold Ellis of the DEM Office of Compliance and Inspection at (401) 222-1360 exts. 7703 and 740, 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:

Walter W. Armstrong
1 Almy Street
Johnston, RI 02919

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C07-0293

Respondent: Walter W. Armstrong

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 a Swamp Fact C(3)(a)	Type I (\$1,000 Max. Penalty)*	Moderate	\$750	1 violation	\$750.00
D(1) and (2) – Alteration of a Riverbank Wetland Fact C(3)(b)	Type I (\$1,000 Max. Penalty)*	Major	\$1,000	1 violation	\$1,000.00
D(1) and (2) – Alteration of a Perimeter Wetland Fact C(3)(c)	Type I (\$1,000 Max. Penalty)*	Moderate	\$600	1 violation	\$600.00
D(1) and (2) – Alteration of a second Perimeter Wetland Fact C(3)(d)	Type I (\$1,000 Max. Penalty)*	Moderate	\$700	1 violation	\$700.00
D(1) and (2) – Alteration of a 100-Year Floodplain Fact C(3)(e)	Type I (\$1,000 Max. Penalty)*	Moderate	\$700	1 violation	\$700.00
SUB-TOTAL					\$3,750.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$3,750.00

PENALTY MATRIX WORKSHEET

Citation: Alteration of a Swamp

Violation No.: D (1) and (2); Fact C(3)(a)

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 <i>Rules and Regulations for Assessment of Administrative Penalties</i>				
(A) The extent to which the act or failure to act is out of compliance: The Respondent altered a wetland by clearing, filling (in the form of soil material, boulders, rocks and stones, and various landscape features), grading, and creating soil disturbance within Swamp. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.				
(B) Environmental conditions: The Swamp was previously a wild natural forested area prior to the unauthorized alterations. In addition, its proximity to the river make it more valuable for wildlife.				
(C) Amount of the pollutant: Not utilized for this calculation.				
(D) Toxicity or nature of the pollutant: Not utilized for this calculation.				
(E) The duration of the violation: Unknown. DEM first documented the violation on September 5, 2007.				
(F) The areal extent of the violation: The aerial extent of the violation is approximately 2,400 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 and failed to comply with a written notice issued by DEM on April 14, 2009 requiring that he restore the altered wetlands.				
(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 utilized for this calculation.				
(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 utilized for this calculation.				
MAJOR		<u>X</u> MODERATE		MINOR
Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800 \$750	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200

PENALTY MATRIX WORKSHEET

Citation: Alteration of a Riverbank Wetland
 Violation No.: D (1) and (2); Fact C(3)(b)

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 <i>Rules and Regulations for Assessment of Administrative Penalties</i>			
(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 soil material, crushed stone, rocks, boulders, wood chips, various structures, fencing, and other various materials), grading, and/or creating soil disturbance within Riverbank Wetland. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.			
(B) Environmental conditions: In the early 70's the Riverbank Wetland was forested. By 1985 some of the wetland was forest and fallow pasture. Major alterations occurred after the Respondent's purchase of the property.			
(C) Amount of the pollutant: Not utilized for this calculation.			
(D) Toxicity or nature of the pollutant: Not utilized for this calculation.			
(E) The duration of the violation: Unknown. DEM first documented the violation on September 5, 2007.			
(F) The areal extent of the violation: The aerial extent of the violation is approximately 50,525 ft ² .			
(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance: Respondent failed to obtain the appropriate permit from DEM and failed to comply with a written notice issued by DEM on April 14, 2009 requiring that he restore the altered wetlands.			
(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 utilized for this calculation.			
(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 utilized for this calculation.			
<u>X</u> MAJOR		MODERATE	
MAJOR		MINOR	
Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000 \$1,000	\$600 to \$800
	MODERATE	\$600 to \$800	\$400 to \$600
	MINOR	\$400 to \$600	\$200 to \$400
		\$400 to \$600	\$100 to \$200

PENALTY MATRIX WORKSHEET

Citation: Alteration of a Perimeter Wetland
 Violation No.: D (1) and (2); Fact C(3)(c)

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 <i>Rules and Regulations for Assessment of Administrative Penalties</i>			
(A) The extent to which the act or failure to act is out of compliance: The Respondent altered a wetland by clearing, grading and creating soil disturbance within Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.			
(B) Environmental conditions: The Perimeter Wetland was a natural forested area prior to the unauthorized alterations.			
(C) Amount of the pollutant: Not utilized for this calculation.			
(D) Toxicity or nature of the pollutant: Not utilized for this calculation.			
(E) The duration of the violation: Unknown. DEM first documented the violation on September 5, 2007.			
(F) The areal extent of the violation: The aerial extent of the violation is 3,150 ft ² .			
(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance: Respondent failed to obtain the appropriate permit from DEM and failed to comply with a written notice issued by DEM on April 14, 2009 requiring that he restore the altered wetlands.			
(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 utilized for this calculation.			
(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 utilized for this calculation.			
MAJOR		<u>X</u> MODERATE	
MAJOR		MINOR	
Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000	\$600 to \$800
	MODERATE	\$600 to \$800 \$600	\$400 to \$600
	MINOR	\$400 to \$600	\$200 to \$400
		\$400 to \$600	\$100 to \$200

PENALTY MATRIX WORKSHEET

Citation: Alteration of a Second Perimeter Wetland
 Violation No.: D (1) and (2); Fact C(3)(d)

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 <i>Rules and Regulations for Assessment of Administrative Penalties</i>				
(A) The extent to which the act or failure to act is out of compliance: The Respondent altered a wetland by clearing, filling (in the form of soil material and fencing material), grading, and/or creating soil disturbance within a second Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.				
(B) Environmental conditions: The Perimeter Wetland was a natural forested area prior to the unauthorized alterations.				
(C) Amount of the pollutant: Not utilized for this calculation.				
(D) Toxicity or nature of the pollutant: Not utilized for this calculation.				
(E) The duration of the violation: Unknown. DEM first documented the violation on September 5, 2007.				
(F) The areal extent of the violation: The aerial extent of the violation is 5,900 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 and failed to comply with a written notice issued by DEM on April 14, 2009 requiring that he restore the altered wetlands.				
(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 utilized for this calculation.				
(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 utilized for this calculation.				
MAJOR		<u> X </u> MODERATE		MINOR
Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800 \$700	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200

PENALTY MATRIX WORKSHEET

Citation: Alteration of a 100 Year Floodplain

Violation No.: D (1) and (2); Fact C(3)(e)

TYPE			
<u> X </u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.	<u> </u> 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 <i>Rules and Regulations for Assessment of Administrative Penalties</i>			
(A) The extent to which the act or failure to act is out of compliance: The Respondent altered a wetland by filling (in the form of soil material, crushed stone, rocks, structures, fencing, and other various materials), and grading within 100-Year Floodplain. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.			
(B) Environmental conditions: In the early 70's the Floodplain was forested. By 1985 some of the Floodplain was forest and fallow pasture. Major alterations within the Floodplain occurred after the Respondent's purchase of the property.			
(C) Amount of the pollutant: Not utilized for this calculation.			
(D) Toxicity or nature of the pollutant: Not utilized for this calculation.			
(E) The duration of the violation: Unknown. DEM first documented the violation on September 5, 2007.			
(F) The areal extent of the violation: The aerial extent of the violation is 12,800 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 and failed to comply with a written notice issued by DEM on April 14, 2009 requiring that he restore the altered wetlands.			
(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 utilized for this calculation.			
(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 utilized for this calculation.			
MAJOR		<u> X </u> MODERATE	
Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000	\$600 to \$800
	MODERATE	\$600 to \$800 \$700	\$400 to \$600
	MINOR	\$400 to \$600	\$200 to \$400
		TYPE III	MINOR
		\$400 to \$600	\$100 to \$200