

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

**IN RE: Fred R. Constancia
Marianne Constancia
F.C.C., Inc.**

FILE NO.: FW C11-0188

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 DEM's jurisdiction.

B. Facts

- (1) The property is located approximately 300 feet south of Woodlawn Avenue, Pole #18, and approximately 120 feet east of the intersection of Anthony Avenue and Woodlawn Avenue, Assessor's Plat 161-B, Lot 38 in the Town of Bristol, Rhode Island (the “Property”).
- (2) Fred R. Constancia and Marianne Constancia own the Property (the “Owners”). The Property was transferred to the Owners from F.C.C., Inc. (“FCC”) on September 17, 2004.
- (3) On October 15, 2007 the DEM issued Insignificant Alteration Permit No. 05-0133 to FCC to construct 2 residential dwellings on the Property (the “Permit”). Fred Constancia and Marianne Constancia are the President and Vice President of FCC, respectively.
- (4) On February 20, 2009 the DEM issued a revised Permit to FCC (the “Revised Permit”).
- (5) The Revised Permit requires FCC to:
 - (a) Install temporary erosion and sediment controls.
 - (b) Erect or post a sign in a conspicuous location on the Property identifying the Revised Permit.
 - (c) Construct the dwelling in the location shown on the approved plan.
 - (d) Record the Revised Permit in the land evidence records of the Town of Bristol and provide a copy of the recorded permit to the DEM.

- (e) Notify the DEM immediately prior to the commencement of the work.
- (6) The DEM inspected the Property on December 6, 2011. The inspection revealed the following:
 - (a) Clearing within Swamp. This activity has resulted in the unauthorized alteration of approximately 3,040 square feet of freshwater wetland.
 - (b) Clearing and filling (in the form of sediment) within Perimeter Wetland and Riverbank Wetland. This activity has resulted in the unauthorized alteration of approximately 14,560 square feet of freshwater wetland.
 - (c) No temporary erosion and sediment controls were installed.
 - (d) No sign was posted.
 - (e) The dwelling was constructed in a location that differed from the location shown on the approved plan.
- (7) The DEM's review of its records also revealed the following:
 - (a) No copy of the recorded permit was submitted to the DEM.
 - (b) The DEM was not notified prior to the commencement of the site alterations.

C. 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 Governing the Administration and Enforcement of the Freshwater Wetlands Act (the "Freshwater Wetland Regulations"), Rule 5.01** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (3) **DEM's Freshwater Wetland Regulations, Rule 9.04B** – requiring an applicant to comply with all conditions of a permit.

D. Order

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

- (1) **IMMEDIATELY** cease and desist from any further alteration of the above described freshwater wetlands.
- (2) **Within 7 days of receipt of this Notice of Violation (“NOV”)**, submit to the DEM a copy of the recorded Revised Permit.
- (3) **Within 7 days of receipt of the NOV**, erect or post a sign in a conspicuous location on the Property identifying the Revised Permit.
- (4) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) Prior to the commencement of restoration, install a continuous uninterrupted line of staked haybales or silt fence between all areas to be restored and the adjacent undisturbed freshwater wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced) during and following the completion of the required wetland restoration activities, and until such time that all surrounding areas are properly stabilized. At the discretion and direction of DEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
- (b) Remove all unauthorized fill material (sediment) from the Perimeter Wetland and Riverbank Wetland. All fill material that is removed shall be deposited in an appropriate upland location, outside of any and all freshwater wetlands.
- (c) Stabilize all disturbed surfaces within the Perimeter Wetland and Riverbank Wetland by covering with a wildlife conservation seed mixture and a thick mat of loose hay mulch.
- (d) Plant trees and shrubs in all unauthorized cleared/altered portions of the Perimeter Wetland and Riverbank Wetland as follows:

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

Red maple, *Acer rubrum*
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 shall be planted in an interspersed fashion 5 feet on center, 3 feet tall after planting, throughout the area defined above. Shrub species shall include an equal distribution of at least 5 of the following selections:

Mountain laurel, *Kalmia latifolia*
Red osier dogwood, *Cornus stolonifera*
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*
Winterberry, *Ilex verticillata*
Inkberry, *Ilex glabra*
American holly, *Ilex opaca*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Spice bush, *Lindera benzoin*
Sweet pepperbush, *Clethra alnifolia*
Swamp azalea, *Rhododendron viscosum*

- (e) In addition to the plantings required above, a line of northern white cedar (*Thuja occidentalis*) or red cedar (*Juniperus virginiana*) must be planted along the outer edge of the Perimeter Wetland where indicated on the Revised Permit. Plantings must be at least 4 feet in height after planting and spaced 10 feet on-center as a permanent limit of disturbance.
- (f) If any or all of the required plantings fail to survive at least 1 full year from the time the plantings have been verified by DEM, the same plant species shall be replanted and maintained until such time that survival occurs over 1 full year.
- (g) All restored wetland areas, including replanted areas, shall 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 the DEM.
- (h) Upon stabilization of all disturbed areas all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) shall 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 all accumulated sediment shall be removed to a suitable upland area and all disturbed surfaces shall be stabilized as described above.

- (i) The above restoration work shall be completed prior to **May 15, 2012**.
- (3) Contact Mr. Andrew Charpentier at DEM (401) 222-2306 ext. 7414 prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No work shall commence until such time that you have met in the field with a representative of DEM.

E. 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:

Fourteen Thousand Dollars (\$14,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the DEM within 20 days of your receipt of this 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 respondents 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.

F. 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 E 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 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 Bristol 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. Andrew

Charpentier or Mr. Harold Ellis of the DEM Office of Compliance and Inspection at (401) 222-2306 extension 7414 and (401) 222-4700 extension 7401, respectively.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR

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

Date: _____

CERTIFICATION

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

Fred R. Constancia
84 Woodlawn Avenue
Bristol, RI 02809

Marianne Constancia
84 Woodlawn Avenue
Bristol, RI 02809

F.C.C., Inc.
c/o Fred Constancia, Registered Agent
84 Woodlawn Avenue
Bristol, RI 02809

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C11-0188

Respondents: Fred Constancia, Marianne Constancia and F.C.C., Inc.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C(1) and C(2) – Alteration of a Swamp without a permit	Type I (\$10,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
C(1) and C(2) – Alteration of a Perimeter Wetland and a Riverbank Wetland without a permit	Type I (\$10,000 Max. Penalty)*	Major	\$7,500	1 violation	\$7,500.00
C(3) – Failure to install erosion and sediment controls	Type I (\$10,000 Max. Penalty)*	Minor	\$2,000	1 violation	\$2,000.00
C(3) – Failure to post a sign	Type III (\$10,000 Max. Penalty)*	Minor	\$100	1 violation	\$100.00
C(3) – Failure to construct the house in the location shown on the approved plan	Type I (\$10,000 Max. Penalty)*	Minor	\$1,000	1 violation	\$1,000.00
C(3) – Failure to provide copy of recorded permit	Type III (\$10,000 Max. Penalty)*	Minor	\$150	1 violation	\$150.00
C(3) – Failure to notify DEM prior to commencement of work	Type II (\$10,000 Max. Penalty)*	Minor	\$750	1 violation	\$750.00
SUB-TOTAL					\$14,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$14,000.00

PENALTY MATRIX WORKSHEET

CITATION: Alteration of a Swamp without a permit
 VIOLATION NO.: C (1) and (2)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents altered freshwater wetlands by clearing 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 freshwater wetland was previously an undisturbed Swamp prior to the unauthorized alteration.
- (C) **Amount of the pollutant:** Not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Not utilized for this calculation.
- (E) **Duration of the violation:** Unknown. The DEM first documented the violation on December 6, 2011.
- (F) **Areal extent of the violation:** The aerial extent of the violation is approximately 3,040 square feet.

(continued)

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** F.C.C., Inc. obtained a permit and a revised permit on October 15, 2007 and February 20, 2009, respectively. The plans approved with the permit clearly show the limit of disturbance (LOD). Despite the LOD, the Respondents failed to protect the wetland. The DEM spoke with Fred Constancia on December 13, 2011 and advised him of the violation. Mr. Constancia expressed no concern about the violation, provided no indication that he intended to restore the wetland and stated that he intended to sell the property.
- (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 Respondents had complete control over the project, were aware of the LOD, 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	MODERATE	<u>X</u> MINOR
--------------	-----------------	------------------------------

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

PENALTY MATRIX WORKSHEET

CITATION: Alteration of a Perimeter Wetland and a Riverbank Wetland without a permit
 VIOLATION NO.: C (1) and (2)

TYPE

<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------

DEVIATION FROM THE STANDARD
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents altered freshwater wetlands by clearing and filling (in the form of sediment) within Perimeter Wetland and 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:** The Perimeter Wetland and Riverbank Wetland were previously an undisturbed forested area prior to the unauthorized alteration.
- (C) **Amount of the pollutant:** Not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Not utilized for this calculation.
- (E) **Duration of the violation:** Unknown. The DEM first documented the violation on December 6, 2011.
- (F) **Areal extent of the violation:** The aerial extent of the violation is approximately 14,560 square feet.

(continued)

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** F.C.C., Inc. obtained a permit and a revised permit on October 15, 2007 and February 20, 2009, respectively. The plans approved with the permit clearly show the limit of disturbance (LOD). Despite the LOD, the Respondents failed to protect the wetlands. The DEM spoke with Fred Constancia on December 13, 2011 and advised him of the violation. Mr. Constancia expressed no concern about the violation, provided no indication that he intended to restore the wetlands and stated that he intended to sell the property.
- (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 Respondents had complete control over the project, were aware of the LOD, 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	MINOR
--------------------	----------	-------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$7,500	\$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: Failure to install erosion and sedimentation controls

VIOLATION NO.: C (3)

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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondents failed to install temporary erosion and sediment controls in accordance with the permit. The extent of noncompliance was determined to be of importance to the regulatory program.</p> <p>(B) Environmental conditions: The erosion controls were necessary to protect the remaining wetland from unauthorized alterations and to demarcate the limit of disturbance on the property.</p> <p>(C) Amount of the pollutant: Not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Not utilized for this calculation.</p> <p>(E) Duration of the violation: Unknown. The DEM first documented the violation on December 6, 2011.</p> <p>(F) Areal extent of the violation: Not utilized for this calculation.</p> <p style="text-align: right; margin-top: 20px;">(continued)</p>		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to install the erosion and sediment controls in accordance with the permit. The Respondents failed to take reasonable and appropriate steps to protect the wetland.
- (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 Respondents had complete control over the project and were aware of the requirements in the permit.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

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

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to post a sign

VIOLATION NO.: C (3)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> X </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondents failed to erect or post a sign in a conspicuous location on the property identifying the permit.</p> <p>(B) Environmental conditions: Not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Not utilized for this calculation.</p> <p>(E) Duration of the violation: Unknown. The DEM first documented the violation on December 6, 2011.</p> <p>(F) Areal extent of the violation: Not utilized for this calculation.</p> <p style="text-align: right; margin-top: 20px;">(continued)</p>		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to post a sign on the property in accordance with the permit. The Respondents failed to take reasonable and appropriate steps to comply with the permit.
- (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 Respondents had complete control over the project and were aware of the requirement to post a sign.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

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

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to construct the house in the location shown on the approved plan
 VIOLATION NO.: C (3)

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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ul style="list-style-type: none"> (A) The extent to which the act or failure to act was out of compliance: The Respondents failed to construct the house in the location shown on the approved plan for the permit. The extent of noncompliance was determined to be of importance to the regulatory program. (B) Environmental conditions: Not utilized for this calculation. (C) Amount of the pollutant: Not utilized for this calculation. (D) Toxicity or nature of the pollutant: Not utilized for this calculation. (E) Duration of the violation: Not utilized for this calculation. (F) Areal extent of the violation: Not utilized for this calculation. <p style="text-align: right; margin-top: 20px;">(continued)</p>		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to construct the house in the correct location on the approved plan. The Respondents failed to take reasonable and appropriate steps to comply with the permit.
- (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 Respondents had complete control over the project, they proposed the approved work shown on the approved plan, and they had an obligation to comply with the permit.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

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

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to provide copy of recorded permit

VIOLATION NO.: C (3)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> X </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondents failed to provide a copy of the recorded permit to the DEM. The extent of noncompliance was determined to be of importance to the regulatory program.</p> <p>(B) Environmental conditions: Not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Not utilized for this calculation.</p> <p>(E) Duration of the violation: Not utilized for this calculation</p> <p>(F) Areal extent of the violation: Not utilized for this calculation.</p> <p style="text-align: right; margin-top: 20px;">(continued)</p>		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents were issued a permit on October 15, 2007 and a revised permit on February 20, 2009. Despite the requirement set forth in the permits, the Respondents failed to provide a copy of the recorded permit to the DEM.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not 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 Respondents had complete control over the project and were aware of the requirement to provide a copy of the recorded permit to the DEM.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

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

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500 \$150

PENALTY MATRIX WORKSHEET

CITATION: Failure to notify DEM prior to commencement of work

VIOLATION NO.: C (3)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> X </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondents failed to provide notification to DEM (written or verbal) prior to commencement of the work. The extent of noncompliance was determined to be of importance to the regulatory program.</p> <p>(B) Environmental conditions: Not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Not utilized for this calculation.</p> <p>(E) Duration of the violation: Unknown. The DEM first documented the work was underway on December 6, 2011.</p> <p>(F) Areal extent of the violation: Not utilized for this calculation.</p> <p style="text-align: right; margin-top: 20px;">(continued)</p>		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents were issued a permit on October 15, 2007 and a revised permit on February 20, 2009. Despite the requirement set forth in the permit, the Respondents failed to notify the DEM when work was going to commence.
- (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 Respondents had complete control over the project, were aware of the requirement to notify DEM, and had an obligation to comply with the permit.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

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

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000 \$750	\$100 to \$500