

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

**IN RE: Dedicated Builders, LLC  
JCM, LLC  
James C. McKee**

**FILE NO.: FW C10-083**

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 jurisdiction of DEM.

B. Facts

- (1) The subject property is located approximately 580 feet south of Howard Road, approximately 500 feet southeast of the intersection of Howard Road and Louise F. Luther Drive, Assessor's Plat 23, Lots 10, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221 and 222 in the town of Cumberland, Rhode Island (the “Property”).
- (2) The Property includes a fourteen lot residential subdivision with single family dwellings and driveways, a road (Clover Court) and a storm water drainage system (the “subdivision”).
- (3) Dedicated Builders LLC owns lots 213, 214, 219, and 222 on the Property. Dedicated Builders LLC and/or James C. McKee formerly owned all the lots on the Property.
- (4) On May 31, 2007 James C. McKee submitted a Request for Preliminary Determination (No. 07-0252) to the DEM Office of Water Resources (“OWR”) for approval to alter freshwater wetlands associated with the construction of the subdivision (the “Preliminary Application”). The drainage report and blueprint plans included with the application identified JCM, LLC as the applicant. The check for the application fee was in the name of Dedicated Builders, LLC.
- (5) James C. McKee is listed as a member of Dedicated Builders, LLC and JCM, LLC.
- (6) On March 28, 2008 OWR issued a letter to Mr. McKee. The letter stated that the work proposed in the Preliminary Application represented a significant alteration to freshwater wetlands and that he had to submit an Application to Alter a Freshwater Wetland (the “Alteration Application”) and receive approval from OWR prior to altering any wetlands.

- (7) DEM inspected the Property on August 11, 2010, August 12, 2010, and August 23, 2010. The inspections revealed the following:
  - (a) A storm water drainage system on Clover Court with catch basins and drainage pipes that discharges storm water from the subdivision into a basin located on lot 217 (the “storm water basin”);
  - (b) An approximately two and one half foot diameter pipe at the outlet of the storm water basin (the “outlet pipe”);
  - (c) The end of the outlet pipe constructed within the 200-foot Riverbank Wetland of Abbot Run Brook on lot 215 (the “Riverbank Wetland”);
  - (d) The discharge of storm water containing pollutants (in the form of sediment) from the outlet pipe into Abbott Run Brook;
  - (e) Clearing and grading in the Riverbank Wetland to install a lawn and shed; and
  - (f) Erosion and discharge of sediment from the subdivision into the Riverbank Wetland.
- (8) Abbott Run Brook is a freshwater wetland and is classified as Class AA water pursuant to the DEM Water Quality Regulations.
- (9) The designated uses for Class AA water bodies, as specified in the DEM Water Quality Regulations, include tributary water within a drinking water supply watershed, primary and secondary contact recreation and fish and wildlife habitat, among others, and shall have excellent aesthetic value.
- (10) The Alteration Application as requested in the letter OWR issued to Mr. McKee on March 28, 2008 was not submitted to OWR and the Respondents did not receive approval from the DEM to alter freshwater wetlands on the Property in the areas specified above.
- (11) The Respondents did not receive approval from DEM to discharge storm water to the waters of the State.
- (12) As of the date of this Notice of Violation (“NOV”), the Respondents have failed to cease the discharge of storm water to the waters of the State.

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) **The Rhode Island Freshwater Wetland Act Section 2-1-21** - prohibiting activities which may alter freshwater wetlands without a permit from the DEM.

- (2) **DEM Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Rule 5.01** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (3) **The Rhode Island Water Pollution Act**
  - (a) **Section 46-12-5(a)** – prohibiting the placement of any pollutant in a location where it is likely to enter the waters of the State.
  - (b) **Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
  - (c) **Section 46-12-5(c)** – prohibiting the construction or installation of any industrial, commercial, or other establishment, any modification or addition thereto, or undertaking any development which may result in the discharge of any pollutant into the waters of the state, unless the discharge is made to a system or means to prevent pollution approved by the director.
- (4) **DEM Water Quality Regulations**
  - (a) **Rule 9(A)** – prohibiting the discharge of pollutants into any waters of the State or any activity alone or in combination which the Director determines will likely result in the violation of any State water quality criterion or interfere with one or more of the existing or designated uses assigned to the receiving waters.
  - (b) **Rule 11(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of a permit issued by DEM.
  - (c) **Rule 13(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to the waters of the State or construction, installation or modification of any treatment works without having obtained all required approvals from the Director.

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) **By December 1, 2010** restore all freshwater wetlands in accordance with the restoration requirements set forth below.

- (a) Immediately install a continuous uninterrupted line of staked haybales or silt fence between those portions of the wetlands that have been altered without authorization and the 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, and until such time that all surrounding areas are properly stabilized. At the discretion and direction of OC&I, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
- (b) Remove all sediment that has been discharged from the subdivision into the Riverbank Wetland and Abbott Run Brook.
- (c) Upon completion of the work in Sections D(1)(a) and (b) above, all original grades within the Riverbank Wetland must be reestablished to their original pre-altered condition and all areas of disturbed surface soils shall be loamed (if necessary), seeded with a wildlife conservation grass seed mixture and covered with a mat of loose hay mulch. Hydroseed, containing the proper seed components and mixed with a proper tackifier (stabilizing mulch material), may be utilized in 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.
- (d) Upon completion of the work in Section D(1)(c) above, the Riverbank Wetland must be planted with trees and shrubs. The trees and shrubs must be balled and burlapped or transplanted tree species and must be planted in an interspersed fashion, ten feet on center, four feet tall after planting, throughout the Riverbank Wetland. Tree species must include an equal distribution of at least three of the following selections:

White pine, *Pinus strobus*  
Northern white cedar, *Thuja occidentalis*  
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*

In addition, balled and burlapped or transplanted shrub species must be planted in an interspersed fashion five feet on center, three feet tall after planting, throughout the area defined above. Shrub species

must include an equal distribution of at least three 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*

Inkberry, *Ilex glabra*

Highbush blueberry, *Vaccinium corymbosum*

Lowbush blueberry, *Vaccinium angustifolium*

Sweet pepperbush, *Clethra alnifolia*

- (e) If any or all of the required plantings fail to survive at least one year from the time that planting has been verified by OC&I, the same plant species shall be replanted and maintained until such time that survival is maintained over one year.
  - (f) 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 OWR.
  - (g) Upon stabilization of all disturbed areas all 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.
  - (h) Contact Ms. Stacey Kurbiel Pinto at 222-1360 ext. 7409 prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No restoration work shall commence until such time that you have met in the field with a representative of OC&I.
- (2) **By May 31, 2011** submit a plan to OC&I to permanently cease the discharge of storm water from the subdivision to the freshwater wetlands and waters of the State, remove the outlet pipe from the Riverbank Wetland and restore the Riverbank Wetland if a permit authorizing said discharge has not been issued by OWR (the “restoration plan”). The restoration plan must include a schedule for completing the work.

- (3) The restoration plan shall be subject to OC&I review and approval. Upon review, OC&I shall provide written notification to the Respondents either granting approval or stating the deficiencies therein. Within fourteen days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondents shall submit to OC&I modified reports, plans or other documents to correct the deficiencies.

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:

**Seventeen Thousand Two Hundred Fifty Dollars (\$17,250.00)**

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty days of your receipt of this 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 this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with this NOV.

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 twenty 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  
235 Promenade Street, 3<sup>RD</sup> Floor  
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 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, 4<sup>TH</sup> 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 Cumberland to be recorded in the 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. Harold Ellis of OC&I at (401) 222-1360 ext. 7401 or Ms. Stacey Kurbiec Pinto at (401) 222-1360 exts. 7409 and 7401, respectively.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section 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 \_\_\_\_\_ 2010  
the within Notice of Violation was forwarded to:

Dedicated Builders LLC  
c/o Alfred G. Thibodeau, Esq., Registered Agent  
1420 Mendon Road  
Cumberland, RI 02864

JCM, LLC  
c/o Alfred G. Thibodeau, Esq., Registered Agent  
1420 Mendon Road  
Cumberland, RI 02864

James C. McKee  
3437 Mendon Road – Suite 201  
Cumberland, RI 02864

by Certified Mail.

---



# ADMINISTRATIVE PENALTY SUMMARY

Program: Office of Compliance and Inspection, Freshwater Wetlands

File No.: FW C10-0083

Respondents: Dedicated Builders, LLC, JCM, LLC and James C. McKee

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 (2) – Installation of storm drainage pipe in Riverbank Wetland	Type I (\$10,000 Max. Penalty)*	Moderate	\$3,500	1	\$3,500.00
C(1) and (2) – Erosion and sedimentation of Riverbank Wetland	Type I (\$10,000 Max. Penalty)*	Major	\$5,000	1	\$5,000.00
C(1) and (2) – Grading and clearing in Riverbank Wetland	Type I (\$10,000 Max. Penalty)*	Minor	\$2,500	1	\$2,500.00
C(3)(a) and (b) and C(4)(a)-(c) – Discharge of storm water to River	Type I (\$25,000 Max. Penalty)*	Minor	\$6,250	1	\$6,250.00
<b>SUB-TOTAL</b>					<b>\$17,250.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$17,250.00**

## PENALTY MATRIX WORKSHEET

Citation: Installation of storm drainage pipe in Riverbank Wetland

Violation No.: C (1) and (2)

<b>TYPE</b>				
<u>X</u> <b>TYPE I</b> <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		<u>      </u> <b>TYPE III</b> <i>INCIDENTAL</i> to protecting health, safety, welfare or environment.	
<b>DEVIATION FROM THE STANDARD</b>				
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.				
<b>FACTORS CONSIDERED:</b>				
Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties				
(A) <b>The extent to which the act or failure to act is out of compliance:</b> The Respondents altered freshwater wetlands by installing a storm drainage pipe within the 200-foot Riverbank Wetland associated with Abbott Run Brook. The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) <b>Environmental conditions:</b> The 200-foot Riverbank Wetland in a natural, wild, vegetated condition prior to the alteration.				
(C) <b>Amount of the pollutant:</b> Not relevant				
(D) <b>Toxicity or nature of the pollutant:</b> Not relevant				
(E) <b>The duration of the violation:</b> The violation was first observed by DEM on August 11, 2010.				
(F) <b>The areal extent of the violation:</b> The areal extent of the violation is approximately 1,000 ft <sup>2</sup> .				
(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> On May 31, 2007 a Preliminary Determination Application for the construction of a 14-lot subdivision was submitted to the DEM by James C. McKee. On March 28, 2008 DEM advised Mr. McKee that the application represented a significant alteration to freshwater wetlands and that work may only proceed following the submission of an Application to Alter a Freshwater Wetland and the receipt of a permit from DEM. Respondents failed to submit the Application to Alter to DEM and proceeded to construct the subdivision, roadways, and drainage system.				
(H) <b>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:</b> James C. McKee has violated the Freshwater Wetlands Act numerous other times, some of which are still unresolved.				
(I) <b>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:</b> The Respondents had complete control over the occurrence of the violation and had an obligation to protect the wetlands on the Property. The Respondents failed to obtain the required permit before proceeding with the installation of the storm drainage pipe.				
(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Not relevant.				
<b>MINOR</b>		<u>X</u> <b>MODERATE</b>		<b>MAJOR</b>
<b>Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000</b>		<b>TYPE I</b>	<b>TYPE II</b>	<b>TYPE III</b>
<b>DEVIATION FROM STANDARD</b>	<b>MAJOR</b>	\$5,000 -to- \$10,000	\$2,500 -to- \$5,000	\$1,000 -to- \$2,500
	<b>MODERATE</b>	\$2,500 -to- \$5,000 <b>\$3,500</b>	\$1,000 -to- \$2,500	\$500 -to- \$1,000
	<b>MINOR</b>	\$1,000 -to- \$2,500	\$500 -to- \$1,000	\$100 -to- \$500

# PENALTY MATRIX WORKSHEET

Citation: Erosion and sedimentation of Riverbank Wetland  
 Violation No.: C (1) and (2)

TYPE				
<u>X</u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE III <i>INCIDENTAL</i> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD				
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.				
<b>FACTORS CONSIDERED:</b>				
Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties				
(A) <b>The extent to which the act or failure to act is out of compliance:</b> The Respondents altered freshwater wetlands through erosion and the discharge of sediment in the 200-foot Riverbank Wetland. The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) <b>Environmental conditions:</b> The 200-foot Riverbank Wetland was in a natural, wild, vegetated condition prior to the alterations.				
(C) <b>Amount of the pollutant:</b> Sediment ranged from a slight covering to over 4-inches in the low area at the toe of slope.				
(D) <b>Toxicity or nature of the pollutant:</b> Not relevant				
(E) <b>The duration of the violation:</b> The violation was first observed by DEM on August 12, 2010.				
(F) <b>The areal extent of the violation:</b> The areal extent of the violation is approximately 1,850 ft <sup>2</sup> .				
(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> On May 31, 2007 a Preliminary Determination Application for the construction of a 14-lot subdivision was submitted to the DEM by James C. McKee. On March 28, 2008 DEM advised Mr. McKee that the application represented a significant alteration to freshwater wetlands and that work may only proceed following the submission of an Application to Alter a Freshwater Wetland and the receipt of a permit from DEM. Respondents failed to submit the Application to Alter to DEM and proceeded to construct the subdivision, roadways, and drainage system.				
(H) <b>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:</b> James C. McKee has violated the Freshwater Wetlands Act numerous other times, some of which are still unresolved.				
(I) <b>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:</b> The Respondents had complete control over the occurrence of the violation and had an obligation to protect the wetlands on the Property. The Respondents failed to obtain the required permit before proceeding with the construction.				
(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Not relevant.				
MINOR		<u>X</u> MODERATE		MAJOR
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 <b>\$5,000</b>	\$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: Grading and clearing within Riverbank Wetland  
 Violation No.: C(1) and (2)

TYPE				
<u>X</u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE III <i>INCIDENTAL</i> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD				
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.				
<b>FACTORS CONSIDERED:</b>				
Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties				
(A) <b>The extent to which the act or failure to act is out of compliance:</b> The Respondents altered a freshwater wetland by clearing and grading in the 200-foot Riverbank Wetland to install a lawn and shed on lot 215. The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) <b>Environmental conditions:</b> The 200-foot Riverbank Wetland was in a natural, wild, vegetated condition prior to the alterations.				
(C) <b>Amount of the pollutant:</b> Not relevant				
(D) <b>Toxicity or nature of the pollutant:</b> Not relevant				
(E) <b>The duration of the violation:</b> The violation was first observed by DEM on August 11, 2010.				
(F) <b>The areal extent of the violation:</b> The areal extent of the violation is approximately 1,600 ft <sup>2</sup> .				
(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> On May 31, 2007 a Preliminary Determination Application for the construction of a 14-lot subdivision was submitted to the DEM by James C. McKee. On March 28, 2008 DEM advised Mr. McKee that the application represented a significant alteration to freshwater wetlands and that work may only proceed following the submission of an Application to Alter a Freshwater Wetland and the receipt of a permit from DEM. Respondents failed to submit the Application to Alter to DEM and proceeded to construct the subdivision, roadways, and drainage system. The Respondents mitigated the violation by removing the shed and replanting the Riverbank Wetland with trees and shrubs.				
(H) <b>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:</b> James C. McKee has violated the Freshwater Wetlands Act numerous other times, some of which are still unresolved.				
(I) <b>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:</b> The Respondents had complete control over the occurrence of the violation and had an obligation to protect the wetlands on the Property. The Respondents failed to obtain the required permit before proceeding with the construction.				
(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Not relevant.				
<u>X</u> MINOR		MODERATE		MAJOR
Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		VIOLATION TYPE		
		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 <b>\$2,500</b>	\$500 -to- \$1,000	\$100 -to- \$500

# PENALTY MATRIX WORKSHEET

Citation: Discharge of storm water to River

Violation No.: C(3)(a) and (b) and C(4)(a)-(c)

<b>TYPE</b>			
<u>  X  </u> <b>TYPE I</b> <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <i>INCIDENTAL</i> to protecting health, safety, welfare or environment.	
<b>DEVIATION FROM THE STANDARD</b>			
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.			
<b>FACTORS CONSIDERED:</b>			
Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties			
(A) <b>The extent to which the act or failure to act is out of compliance:</b> The Respondents discharged storm water containing pollutants (in the form of sediment) from the subdivision to Abbott Run Brook without approval by DEM.			
(B) <b>Environmental conditions:</b> The storm water was discharged to Abbott Run Brook, a Class AA water body. The designated uses for Class AA water bodies includes tributary water within a drinking water supply watershed, primary and secondary contact recreation and fish and wildlife habitat, among others, and shall have excellent aesthetic value			
(C) <b>Amount of the pollutant:</b> Unknown. The discharge resulted in a visible sediment delta in the brook.			
(D) <b>Toxicity or nature of the pollutant:</b> Inorganic sediment. High concentrations can be acutely toxic to fish and other aquatic organisms and vegetation.			
(E) <b>The duration of the violation:</b> The violation was first observed by DEM on August 11, 2010.			
(F) <b>The areal extent of the violation:</b> The full areal extent of the violation is unknown. The discharge depends on the magnitude/frequency of rain storms.			
(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> On May 31, 2007 a Preliminary Determination Application for the construction of a 14-lot subdivision was submitted to the DEM by James C. McKee. On March 28, 2008 DEM advised Mr. McKee that the application represented a significant alteration to freshwater wetlands and that work may only proceed following the submission of an Application to Alter a Freshwater Wetland and the receipt of a permit from DEM. Respondents failed to submit the Application to Alter to DEM and proceeded to construct the subdivision, roadways, and drainage system.			
(H) <b>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:</b> James C. McKee has violated the Freshwater Wetlands Act numerous times, some of which are still unresolved.			
(I) <b>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:</b> The Respondents had complete control over the occurrence of the violation and had an obligation to protect Abbott Run Brook. The Respondents failed to obtain the required permit before proceeding with the construction.			
(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Not relevant.			
<u>  X  </u> <b>MINOR</b>		<b>MODERATE</b>	
<b>MAJOR</b>		<b>MAJOR</b>	
<b>Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000</b>		<b>TYPE I</b>	<b>TYPE II</b>
<b>DEVIATION FROM STANDARD</b>	<b>MAJOR</b>	\$12,500 -to- \$25,000	\$6,250 -to- \$12,500
	<b>MODERATE</b>	\$6,250 -to- \$12,500	\$2,500 -to- \$6,250
	<b>MINOR</b>	\$2,500 -to- \$6,250 <b>\$6,250</b>	\$1,250 -to- \$2,500
		<b>TYPE III</b>	
			\$2,500 -to- \$6,250
			\$1,250 -to- \$2,500
			\$250 -to- \$1,250