

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

**IN RE: Gerald Del Signore, Jr.
Deborah Del Signore**

FILE NO.: C08-0136

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. Administrative History

DEM issued informal written notices to the Respondents on October 23, 2008, December 17, 2008 and September 2, 2010 for the violations and met with Gerald Del Signore, Jr. on December 5, 2008 and September 23, 2010 to discuss the violations. The Respondents have failed to comply with the notices.

C. Facts

- (1) The property is located at 191 Pray Hill Road, Assessor's Plat 9, Lot 186, in the town of Glocester, Rhode Island (the "Property").
- (2) The Respondents own the Property.
- (3) Inspection of the Property by DEM on May 20, 2008, July 3, 2008, and December 5, 2008 revealed the following unauthorized alterations of freshwater wetlands:
 - (a) Clearing, grading and filling (in the form of soil material), creating pasture/grazing areas (in some locations), and installing a well and pump within a Swamp, which is also entirely within 100-foot Riverbank Wetland. These activities have resulted in the unauthorized alteration of approximately 35,500 square feet of freshwater wetland.
 - (b) Clearing, filling (in the form of soil material, stone and other construction materials), grading, and creating soil disturbance within a 100-foot Riverbank Wetland, portions of which are also within 50-foot Perimeter Wetland. These activities have resulted in the unauthorized alteration of approximately 24,000 square feet of freshwater wetland.

- (c) Clearing, grading, and creating pasture/grazing areas within a second 100-foot Riverbank Wetland, portions of which are also within 50-foot Perimeter Wetland. These activities have resulted in the unauthorized alteration of approximately 13,000 square feet of freshwater wetland.
 - (d) Clearing, filling (in the form of soil material, stone and other construction materials), grading, and creating soil disturbance within a 50-foot Perimeter Wetland. These activities have resulted in the unauthorized alteration of approximately 7,000 square feet of freshwater wetland.
 - (e) Clearing, grading, and creating pasture/grazing areas within another portion of the 50-foot Perimeter Wetland. These activities have resulted in the unauthorized alteration of approximately 5,000 square feet of freshwater wetland.
 - (f) Clearing, filling (in the form of soil material and piping), grading, and creating soil disturbance within a Stream. These activities have resulted in the unauthorized alteration of approximately 25 linear feet (75 square feet) of freshwater wetland.
- (4) The Respondents 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 DEM.
- (2) DEM’s Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (effective June 1, 2007), Rule 5.01 – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (3) DEM’s Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (effective April 6, 1994), Rule 7.01 – 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 unauthorized 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 disturbed surfaces/areas to be restored and the adjacent undisturbed freshwater wetlands. Appropriate haybale checkdams must be installed within any Stream channels located immediately downslope of required wetland (e.g., Swamp, Perimeter Wetland, and Riverbank Wetland) restoration areas. Prior to the restoration of the Stream, appropriate haybale checkdams must be installed in the Stream immediately below the required restoration work zone. Downstream of the haybale checkdams, additional checkdams must be installed for an adequate distance and at appropriate intervals to ensure the prevention of any further adverse impacts to the Stream.
- (b) Remove all unauthorized fill material from the Swamp, Stream, 50-foot Perimeter Wetlands, and 100-foot Riverbank Wetlands. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
- (c) Following fill removal, affected Swamp areas must be re-established and restored to the conditions that existed prior to the unauthorized alterations. If an adequate organic soil substrate is not present, then an appropriate amount of high-organic plantable soil must be applied to re-establish the correct Swamp elevations and hydrologic regime, matching those of the surrounding undisturbed Swamp. A wetland seed mix must be applied to the surface areas of the restored Swamp and a wildlife conservation seed mix must be applied to any re-established side slopes, with a mat of spread hay mulch also applied over all disturbed surface areas.
- (d) The altered portion of the Stream must be re-established in its original location. Immediately prior to restoration of the Stream, all flows must be redirected via pumping, piping, or an acceptable diversion channel (methodology to be reviewed and authorized by DEM), from a location upstream of the affected restoration area to a proper downstream location. The affected portions of the Stream must be excavated and graded to allow for continuous uninterrupted flow in a north/south direction through the interior portions of the Swamp. Stream channel side slopes (both sides) must be graded to a

maximum 3:1 slope to allow for the creation of stable stream bank areas. The completed bottom and side slopes of the Stream must be properly stabilized by applying a minimum of six (6) inches of high-organic plantable soil, seeding with a wetland seed mix on the channel bottom and a wildlife conservation seed mix on side slopes, and applying a mat of spread hay mulch over all disturbed areas. Prior to the introduction of surface waters into the newly established Stream channel, the bottom and side slopes must adequately stabilized with a well-established growth of grasses and other herbaceous vegetation.

- (e) Re-grade all slopes resulting from fill removal, as well as all areas encompassing the required wetland restoration work, to match existing undisturbed surrounding grades.
- (f) Following fill removal, re-establishment of proper wetland surface grades, and appropriate stabilization of restored wetland areas, plant trees and shrubs within the restored Swamp. The trees and shrubs 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 fill removal, re-establishment of proper wetland surface grades, and appropriate stabilization of restored wetland areas, plant trees and shrubs within the restored 50-foot Perimeter Wetlands and 100-foot Riverbank Wetlands.

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*

Inkberry, *Ilex glabra*
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) years.
 - (i) All areas of disturbed surface soils within the 50-foot Perimeter Wetlands and 100-foot Riverbank Wetlands 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.
 - (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 Property, without first obtaining a valid permit from DEM.
 - (k) All required restoration work to be performed within the Swamp and Stream must be completed during a low-flow period with no rain events forecast for an extended period of time.
 - (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 wetlands. Staked haybales, spread hay mulch, and other naturally-based/bio-degradable erosion control measures may remain in place to decompose naturally. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.
 - (m) All of the restoration work described above must be completed prior to **October 15, 2011**.
- (3) Contact Mr. Bruce Ahern at DEM (401) 222-4700 ext. 7703 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 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 Two Hundred Fifty Dollars (\$3,250.00)

- (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 (20) days of your receipt of this Notice of Violation (“NOV”). Payment shall be in the form of a certified check or money order made payable to the “General Treasury - Water & Air Protection Program Account” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the 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.

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
235 Promenade Street, 3RD 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, 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 Glocester 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. Harold Ellis of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7401.

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 _____
the within Notice of Violation was forwarded to:

Gerald Del Signore
191 Pray Hill Road
Glocester, RI 02814

Deborah Del Signore
191 Pray Hill Road
Glocester, RI 02814

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: C08-136

Respondents: Gerald and Deborah DeSignore

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), D(2), and D(3) – Alteration of Swamp and Riverbank Wetland; Fact C(3)(a)	Type I (\$1,000 Max. Penalty)*	Major	\$1,000	1 violation	\$1,000.00
D(1), D(2), and D(3) – Alteration of Riverbank and Perimeter Wetland; Facts C(3)(b) and (d)	Type I (\$1,000 Max. Penalty)*	Major	\$1,000	1 violation	\$1,000.00
D(1), D(2), and D(3) – Alteration of Riverbank and Perimeter Wetland; Facts C(3)(c) and (e)	Type I (\$1,000 Max. Penalty)*	Moderate	\$750	1 violation	\$750.00
D(1), D(2), and D(3) – Alteration of Stream; Fact C(3)(f)	Type I (\$1,000 Max. Penalty)*	Minor	\$500	1 violation	\$500.00
SUB-TOTAL					\$3,250.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 3,250.00

PENALTY MATRIX WORKSHEET

CITATION: *Alteration of Swamp and Riverbank Wetland Fact C(3)(a)*

VIOLATION NO.: D (1), (2) and (3)

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

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

FACTORS CONSIDERED:

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

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondents cleared, graded, and filled (in the form of soil material), creating pasture/grazing areas (in some locations), and installing a well and pump within a Swamp, which is also entirely within 100-foot Riverbank Wetland. The severity of the alteration to the wetland environment was determined to be of major significance to the regulatory program.
- (B) **Environmental conditions:** The wetlands were in a natural wild condition (i.e., vegetated with trees and shrubs) prior to the alteration.
- (C) **Amount of the pollutant:** Not relevant
- (D) **Toxicity or nature of the pollutant:** Not relevant
- (E) **Duration of the violation:** Portions of this violation have been present since at least 1992.
- (F) **Areal extent of the violation:** The areal extent of the violation is at least 35,500 square feet.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to apply for a permit from DEM requesting approval to alter the freshwater wetlands cited in this action. Despite the issuance of a written notice by DEM requiring restoration of the altered freshwater wetlands, the Respondents have not restored the freshwater 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 relevant
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondents had complete control over the project and had an obligation to first gain approval for work within freshwater wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant

		<u> X </u> MAJOR	MODERATE	MINOR
Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000 \$1,000	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200

PENALTY MATRIX WORKSHEET

CITATION: *Alteration of Riverbank and Perimeter Wetland Facts C(3)(b) and (d)*

VIOLATION NO.: D (1), (2) and (3)

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

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

FACTORS CONSIDERED:

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

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondents cleared, filled (in the form of soil material, stone and other construction materials), graded, and created soil disturbance within a 100-foot Riverbank Wetland, portions of which are also within 50-foot Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of major significance to the regulatory program.
- (B) **Environmental conditions:** The wetlands were in a natural wild condition (i.e., vegetated with trees and shrubs) prior to the alteration.
- (C) **Amount of the pollutant:** Not relevant
- (D) **Toxicity or nature of the pollutant:** Not relevant
- (E) **Duration of the violation:** Portions of this violation have been present since at least 1992.
- (F) **Areal extent of the violation:** The areal extent of the violation is at least 31,000 square feet.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to apply for a permit from DEM requesting approval to alter the freshwater wetlands cited in this action. Despite the issuance of a written notice by DEM requiring restoration of the altered freshwater wetlands, the Respondents have not restored the freshwater 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 relevant
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondents had complete control over the project and had an obligation to first gain approval for work within freshwater wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant

<u> X </u> MAJOR		MODERATE	MINOR	
Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000 \$1,000	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200

PENALTY MATRIX WORKSHEET

CITATION: *Alteration of Riverbank and Perimeter Wetland Facts C(3)(c) and (e)*
 VIOLATION NO.: D (1), (2) and (3)

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

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A 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:** The Respondents cleared, graded, and created pasture/grazing areas within a Riverbank Wetland, portions of which are also within 50-foot Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.
- (B) **Environmental conditions:** The wetlands were in a natural wild condition (i.e., vegetated with trees and shrubs) prior to the alteration.
- (C) **Amount of the pollutant:** Not relevant
- (D) **Toxicity or nature of the pollutant:** Not relevant
- (E) **Duration of the violation:** Portions of this violation have been present since at least 1992.
- (F) **Areal extent of the violation:** The areal extent of the violation is at least 18,000 square feet.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to apply for a permit from DEM requesting approval to alter the freshwater wetlands cited in this action. Despite the issuance of a written notice by DEM requiring restoration of the altered freshwater wetlands, the Respondents have not restored the freshwater 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 relevant
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondents had complete control over the project and had an obligation to first gain approval for work within freshwater wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant

		MAJOR	<u> X </u> MODERATE	MINOR
Penalty Matrix where the applicable statute provides for a civil penalty up to \$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 Stream Fact C(3)(f)*
 VIOLATION NO.: D (1), (2) and (3)

TYPE				
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.		<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.		<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD				
THE DEGREE TO WHICH A 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 was out of compliance: The Respondents cleared, filled (in the form of soil material and piping), graded, and created soil disturbance within a Stream. The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) Environmental conditions: The wetlands were in a natural wild condition (i.e., vegetated with trees and shrubs) prior to the alteration.				
(C) Amount of the pollutant: Not relevant				
(D) Toxicity or nature of the pollutant: Not relevant				
(E) Duration of the violation: Portions of this violation have been present since at least 1992.				
(F) Areal extent of the violation: The areal extent of the violation is approximately 25 linear feet (75 square feet).				
(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: The Respondents failed to apply for a permit from DEM requesting approval to alter the freshwater wetlands cited in this action. Despite the issuance of a written notice by DEM requiring restoration of the altered freshwater wetlands, the Respondents have not restored the freshwater 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 relevant				
(I) The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable: The Respondents had complete control over the project and had an obligation to first gain approval for work within freshwater wetlands on the property.				
(J) Any other factor(s) that may be relevant in determining the amount of a penalty: Not relevant				
MAJOR		MODERATE		<u> X </u> MINOR
Penalty Matrix where the applicable statute provides for a civil penalty up to \$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	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600 \$500	\$200 to \$400	\$100 to \$200