

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

IN RE: Mark DePasquale

FILE NO.: FW C11-0067

NOTICE OF VIOLATION

A. Introduction

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

B. Facts

- (1) The subject property is located approximately 1,340 feet northeast of the intersection of Roberts Way and Ten Rod Road (Route 102) and 1260 feet north of the intersection of Thornton Way and Rodman Lane within a residential development known as North Kingstown Green in the town of North Kingstown, Rhode Island (the “Property”). The Property is also referred to as a portion of the town of North Kingstown Assessor’s Plat/Map 113, Lot 23.
- (2) On September 7, 2006 the DEM issued Insignificant Alteration Permit No. 06-0245 to North Kingstown Green LLC to construct North Kingstown Green (the “Permit”). The Permit was issued to Mark DePasquale as a member of North Kingstown Green LLC.
- (3) The Permit did not authorize the alteration of any freshwater wetlands on the Property.
- (4) The DEM inspected the Property on March 31, 2011. The inspection revealed the following unauthorized alterations of freshwater wetlands:
 - (a) Clearing and filling (in the form of at least wood chips) within Swamp. This activity has resulted in the unauthorized alteration of approximately 5,600 square feet of freshwater wetland; and
 - (b) Clearing and filling (in the form of at least woodchips) within Perimeter Wetland. This activity has resulted in the unauthorized alteration of approximately 4,000 square feet of freshwater wetland.

- (5) The DEM inspector spoke with the Respondent at the time of the March 31, 2011 inspection. The Respondent indicated that he cleared and filled the wetlands to accommodate a wind turbine that he was installing.
- (6) On August 10, 2011 the DEM issued a Notice of Intent to Enforce (“NIE”) to the Respondent. The NIE required the Respondent to restore the altered wetlands.
- (7) On August 22, 2011 the DEM received a letter from the Respondent in response to the NIE. The Respondent stated that he intended to comply with the NIE.
- (8) The DEM inspected the Property on May 17, 2012. This inspection revealed that no restoration had been accomplished and that the following additional unauthorized alterations of freshwater wetlands had occurred:
 - (a) Loaming, grading, and seeding within Swamp. This activity has resulted in the unauthorized alteration of approximately 5,600 square feet of freshwater wetland; and
 - (b) Loaming, grading, and seeding within Perimeter Wetland. This activity has resulted in the unauthorized alteration of approximately 4,000 square feet of freshwater wetland.
- (9) The Respondent did not receive approval from the DEM to alter freshwater wetlands on the Property in the areas specified above.

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, 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, 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) Cease and desist **IMMEDIATELY** from any further alteration of the above described freshwater wetlands, and

- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.
- (a) If necessary, prior to the commencement of restoration, 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 the 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 from the Swamp and Perimeter Wetland. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
 - (c) Plant all unauthorized cleared and altered areas within the Perimeter Wetland with trees and shrubs as follows:

Balled and burlapped or transplanted tree species must be planted in a straight line, eight (8) feet on center, five (5) feet tall after planting, along the outer edge of the original undisturbed path. Tree species must include an equal distribution of at least two (2) of the following selections:

White pine, *Pinus strobus*
Red cedar, *Juniperus virginiana*
Red spruce, *Picea rubens*
Colorado blue spruce, *Picea pungens*
Norway spruce, *Picea abies*

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 cleared/altered portion of the Perimeter Wetland. Tree species must include an equal distribution of at least three (3) of the following selections:

White pine, *Pinus strobus*
Red cedar, *Juniperus virginiana*
Red maple, *Acer rubrum*
Northern red oak, *Quercus rubra*
White oak, *Quercus alba*
Pin oak, *Quercus palustris*
Gray birch, *Betula populifolia*

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 cleared/altered portion of the Perimeter Wetland. Shrub species must include an equal distribution of at least three (3) of the following selections:

Mountain laurel, *Kalmia latifolia*
Giant rhododendron, *Rhododendron maximum*
Arrowwood, *Viburnum dentatum*
Wild raisin, *Viburnum cassinoides*
Winterberry, *Ilex verticillata*
Inkberry, *Ilex glabra*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Witchhazel, *Hamamelis virginiana*

- (d) If any or all of the required plantings fail to survive at least two (2) years from the time planting has been verified by the DEM, the same plant species shall be replanted and maintained until such time that survival occurs for at least two years.
 - (e) A wetland seed mix shall be applied to the surface areas of the restored Swamp and a wildlife conservation seed mix shall be applied to the disturbed Perimeter Wetland and any re-established side slopes at the restoration site. A mat of spread hay mulch shall be applied over all disturbed surface areas.
 - (f) Upon stabilization of all disturbed areas, erosion and sedimentation controls must be removed from the freshwater wetland. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area, outside of any and all freshwater wetlands.
 - (g) All restored freshwater wetland areas, including replanted areas, must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations are authorized in any wetland area on the subject property without first obtaining a valid permit from the DEM.
 - (h) The above restoration work must be completed prior to **September 30, 2012.**
- (3) Contact Mr. Howard Cook of DEM (401) 222-4700 ext. 7161 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 the 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:

Twelve Thousand Dollars (\$12,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM's Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the DEM within twenty (20) days of your receipt of this Notice of Violation ("NOV"). Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the Respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

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 (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
1 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:

Richard M. Bianculli, Jr., 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 North Kingstown 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, please contact Richard M. Bianculli, Jr. at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Mr. Howard Cook or Mr. Harold Ellis of the Office of Compliance and Inspection at (401) 222-4700 exts. 7161 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 _____ 2012
the within Notice of Violation was forwarded to:

Mark DePasquale
42 Thornton Way
North Kingstown, RI 02852

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C11-0067

Respondent: Mark DePasquale

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) Alteration of Swamp; Fact B(4)(a)	Type I (\$10,000 Max. Penalty)*	Moderate	\$4,000	1 violation	\$4,000.00
C(1) and (2); Alteration of Perimeter Wetland; Fact B(4)(b)	Type I (\$10,000 Max. Penalty)*	Moderate	\$4,000	1 violation	\$4,000.00
C(1) and (2); Alteration of Swamp; Fact B(8)(a)	Type I (\$10,000 Max. Penalty)*	Minor	\$2,000	1 violation	\$2,000.00
C(1) and (2); Alteration of Perimeter Wetland; Fact B(8)(b)	Type I (\$10,000 Max. Penalty)*	Minor	\$2,000	1 violation	\$2,000.00
SUB-TOTAL					\$12,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$12,000.00

PENALTY MATRIX WORKSHEET

CITATION: Alteration of Swamp, Fact B(4)(a)
 VIOLATION NO.: C (1) and (2)

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:** Respondent altered freshwater wetlands by clearing and filling (in the form of at least wood chips) within a Swamp. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.
- (B) **Environmental conditions:** The Swamp was in a natural wild condition (i.e., vegetated with trees and shrubs) prior to the alteration.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** The unauthorized alterations were first documented by DEM on March 31, 2011.
- (F) **Areal extent of the violation:** The aerial extent of the violation is at least 5,600 square feet.

(continued)

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent obtained a permit on September 7, 2006. The plans approved with the permit clearly show the limit of disturbance (LOD). Despite the LOD, the Respondent failed to protect the wetland. The Respondent did not take reasonable and appropriate steps to prevent and/or mitigate the noncompliance.
- (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:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the project, was aware of the LOD on the approved plan, 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:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> 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	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$4,000	\$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: Alteration of Perimeter Wetland, Fact B(4)(b)
 VIOLATION NO.: C (1) and (2)

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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<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: Respondent altered freshwater wetlands by clearing and filling (in the form of at least woodchips) within Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.</p> <p>(B) Environmental conditions: The Perimeter Wetland was in a natural wild condition (i.e., vegetated with trees and shrubs) prior to the alteration.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: The unauthorized alterations were first documented by DEM on March 31, 2011.</p> <p>(F) Areal extent of the violation: The aerial extent of the violation is at least 4,000 square feet.</p> <p style="text-align: right;">(continued)</p>		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent obtained a permit on September 7, 2006. The plans approved with the permit clearly show the limit of disturbance (LOD). Despite the LOD, the Respondent failed to protect the wetland. The Respondent did not take reasonable and appropriate steps to prevent and/or mitigate the noncompliance.
- (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:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the project, was aware of the LOD on the approved plan, 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:** Considered, but not utilized for this calculation.

MAJOR	<u>X</u> 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	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$4,000	\$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: Alteration of Swamp, Fact B(8)(a)
 VIOLATION NO.: C (1) and (2)

TYPE		
<p style="text-align: center;"><u>X</u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">____TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">____TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<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: Respondent continued to alter freshwater wetlands by loaming, grading, and seeding within Swamp. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program. (B) Environmental conditions: The Swamp was previously altered. The Respondent was required to restore the Swamp by removing all fill material (e.g., wood chips) and to replant the area with trees, shrubs, and a wildlife conservation grass mixture. (C) Amount of the pollutant: Considered, but not utilized for this calculation. (D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (E) Duration of the violation: The unauthorized alterations were first documented by DEM on March 31, 2011. The additional alterations were documented by DEM on May 17, 2012. (F) Areal extent of the violation: The aerial extent of the violation is at least 5,600 square feet. 		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent obtained a permit on September 7, 2006. The plans approved with the permit clearly show the limit of disturbance (LOD). Despite the LOD, the Respondent failed to protect the wetland. In a letter dated April 30, 2012 the Respondent indicated that he had restored the subject wetlands. Inspection on May 17, 2012 revealed that restoration was not complete and that additional unauthorized work was accomplished within 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:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the project, was aware of the LOD on the approved plan, and had an obligation to protect the wetlands on the property. Despite being told how to restore the wetland, the Respondent failed to remove the fill and loamed and seeded over the altered wetland.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but 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: Alteration of Perimeter Wetland, Fact B(8)(b)
 VIOLATION NO.: C (1) and (2)

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: Respondent continued to alter freshwater wetlands by loaming, grading, and seeding within Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.</p> <p>(B) Environmental conditions: The Perimeter Wetland was previously altered. The Respondent was required to restore the Swamp by removing all fill material (e.g., wood chips) and to replant the area with trees, shrubs, and a wildlife conservation grass mixture.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: The unauthorized alterations were first documented by DEM on March 31, 2011. The additional alterations were documented by DEM on May 17, 2012.</p> <p>(F) Areal extent of the violation: The aerial extent of the violation is at least 4,000 square feet.</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 Respondent obtained a permit on September 7, 2006. The plans approved with the permit clearly show the limit of disturbance (LOD). Despite the LOD, the Respondent failed to protect the wetland. In a letter dated April 30, 2012 the Respondent indicated that he had restored the subject wetlands. Inspection on May 17, 2012 revealed that restoration was not complete and that additional unauthorized work was accomplished within 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:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the project, was aware of the LOD on the approved plan, and had an obligation to protect the wetlands on the property. Despite being told how to restore the wetland, the Respondent failed to remove the fill and loamed and seeded over the altered wetland.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but 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