

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

**IN RE: Joseph R. Vinagro Properties, LLC**

**FILE NO.: FW C06-0361**

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 DEM’s jurisdiction.

B. Administrative History

On October 5, 2010 the DEM issued an informal written notice to the Respondent for the violations. The notice required specific actions to correct the violations. The Respondent has failed to comply with the notice.

C. Facts

- (1) The property is located approximately 1,000 feet north of Plainfield Pike (Route 14) and 1,000 feet east of Green Hill Road, situated approximately 1,600 feet northwest of the commercial building at 2208 Plainfield Pike, approximately 1,200 feet northeast of the intersection of Plainfield Pike and Green Hill Road, Assessor's Plat 30, Lot 10, in the town of Johnston, Rhode Island (the “Property”).
- (2) The Respondent owns the Property.
- (3) DEM inspected the Property on September 15, 2006 and September 14, 2010. The inspections revealed the following unauthorized alterations of freshwater wetlands:
  - (a) Clearing, filling (in the form of at least soil material, stone, concrete blocks, and other construction materials), grading, and creating soil disturbance within a Forested Wetland, portions of which are Riverbank Wetland. This activity resulted in the unauthorized alteration of approximately 108,050 square feet (approximately 2.5 acres) of freshwater wetland.
  - (b) Clearing, filling (in the form of at least soil material, stone, and construction materials), grading, and culverting within a Stream. This

activity resulted in the unauthorized alteration of approximately 440 linear feet (approximately 2,200 square feet) of freshwater wetland.

- (c) Clearing, filling (in the form of at least soil material, stone, concrete blocks, and other construction materials), grading, and creating soil disturbance within Riverbank Wetland. This activity resulted in the unauthorized alteration of approximately 28,275 square feet (approximately 0.65 acres) of freshwater wetland.
- (4) The Respondent did not receive approval from the DEM to alter freshwater wetlands on the Property in the areas specified above.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **R.I. Gen. Laws Section 2-1-21** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (2) **DEM's Rules and Regulations 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 23, 1998), 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 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 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 (in the form of at least soil material, gravel, rocks, culverts, pavement, trailers, buildings, fencing, and vehicles) from the Forested Wetland, Stream, and Riverbank Wetland down to the original, prealtered surface grades. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands. If an adequate organic soil substrate is not present within the limits of the Forested Wetland, remove an additional eight (8) inches of soil material from the excavated area. The restoration area shall then be backfilled with a minimum eight (8) inches of high-organic plantable soil to re-establish the pre-altered Forested Wetland elevations and hydrologic regime. Following restoration of the Forested Wetland, a stable slope must be created surrounding the restored wetland.
- (c) Following the establishment of final grades, a wetland seed mix shall be applied to the surface areas of the Forested Wetland. The surfaces of all established side slopes and Riverbank Wetland must be covered with an acceptable plantable soil (a minimum four (4) inches) and seeded with an appropriate wildlife conservation seed mix. A thick mat of spread hay mulch must be applied over all disturbed surface areas.
- (d) Following removal of the culverts, the Stream must be restored to the width, depth, substrate, and configuration of the original prealtered Stream. The Stream shall be graded to create stable side slopes. The completed bottom and side slopes of the Stream shall be properly stabilized by applying a minimum of six (6) inches of high-organic plantable soil and seeding with a wetland seed mix. All seeded areas shall be covered with a thick mat of spread hay mulch or biodegradable erosion control matting. Prior to the introduction of surface waters into the restored Stream the bottom and side slopes shall be adequately stabilized with a well-established growth of grasses and other herbaceous vegetation.
- (e) Plant trees and shrubs within the restored Forested Wetland. The trees and shrubs shall be obtained from nursery stock that has been raised in hydric

conditions. If necessary, to improve survivability, tree and shrub plantings may be installed within small raised mounds of high-organic plantable soil material (slightly elevated only).

Balled and burlapped or transplanted tree species shall be planted in an interspersed fashion, ten (10) feet on center, at least four (4) feet tall after planting, throughout the Forested Wetland. Tree species shall include an equal distribution of at least three (3) 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 shall be planted in an interspersed fashion five (5) feet on center, three (3) feet tall after planting, throughout the Forested Wetland. Shrub species shall include an equal distribution of at least four (4) of the following selections:

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

- (f) Plant trees and shrubs within the restored Riverbank Wetland.

Balled and burlapped or transplanted tree species must be planted in a straight line, ten (10) feet on center, six (6) feet tall after planting, along the outer edge (limit) of the Riverbank Wetland. The tree species to be utilized for this purpose must taken from the following selections:

Eastern arborvitae, *Thuja occidentalis*  
White pine, *Pinus strobus*  
Red Cedar, *Juniperus Virginia*  
Red spruce, *Picea rubens*

Balled and burlapped or transplanted tree species must also be planted in an interspersed fashion, throughout the areas defined above. Trees must be planted ten (10) feet on center, four (4) feet tall after planting, and must include an equal distribution of at least three (3) of the following selections:

Eastern arborvitae, *Thuja occidentalis*  
White pine, *Pinus strobus*  
Red maple, *Acer rubrum*  
White oak, *Quercus alba*  
Northern red oak, *Quercus rubra*  
White ash, *Fraxinus americana*  
Box elder (ashleaf maple), *Acer negundo*  
Sassafras, *Sassafras albidum*  
Sycamore, *Platanus occidentalis*

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 (4) of the following selections:

Mountain laurel, *Kalmia latifolia*  
Gray dogwood, *Cornus racemosa*  
Arrowwood, *Viburnum dentatum*  
Wild raisin, *Viburnum cassinoides*  
American cranberry bush, *Viburnum trilobum*  
Inkberry, *Ilex glabra*  
Highbush blueberry, *Vaccinium corymbosum*  
Mapleleaf viburnum, *Viburnum acerifolium*  
Sweet pepperbush, *Clethra alnifolia*  
Bayberry, *Myrica pennsylvanica*  
Witch hazel, *Hamamelis virginiana*  
Black chokeberry, *Aronia melanocarpa*

- (g) 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 the DEM, the same plant species shall be replanted and maintained until such time that survival is maintained over two (2) years.
- (h) 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 the DEM.

- (i) 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, all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.
  - (j) If the DEM determines that adequate hydrology to support wetland vegetation has not been established for two (2) years following the completion of the wetland restoration, the grade shall be lowered to attain the proper hydrology. This shall be repeated until such time that a viable functioning wetland is established.
  - (k) Retain the services of a qualified environmental consultant to provide continual inspection and monitoring of the required wetland restoration work throughout the completion of the project. Monthly monitoring reports shall be provided by the consultant to the DEM until the restoration is completed to the DEM's satisfaction.
  - (l) Following satisfactory completion of the wetland restoration, the environmental consultant shall perform quarterly inspections and provide status reports to the DEM for a period of two (2) years from the date of the completed restoration.
  - (m) All of the restoration work outlined above must be completed prior to **May 15, 2012**.
- (3) Contact Mr. Bruce Ahern at (401)222-1360 ext. 7703 prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No work shall commence until such time that you have met in the field with a representative of the 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 Dollars (\$3,000.00)**

- (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 Director within twenty (20) days of your receipt of this Notice of Violation (“NOV”). Payment shall be in the form of a certified check, cashiers check or money order made payable to the “General Treasury - Water & Air Protection Program Account” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the Respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
  - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b),
  - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk  
DEM - Administrative Adjudication Division  
One Capitol Hill, 2<sup>nd</sup> 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, 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 Johnston 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) Richard Bianculli at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Mr. Bruce Ahern or Mr. Harold Ellis of the Office of Compliance and Inspection at (401) 222-1360 exts. 7703 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 G above.

FOR THE DIRECTOR

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

Date: \_\_\_\_\_

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2011  
the within Notice of Violation was forwarded to:

**Joseph R. Vinagro Properties, LLC  
c/o Fred J. Volpe, Registered Agent  
130 Tower Hill Road  
North Kingstown, RI 02852**

by Certified Mail.

\_\_\_\_\_



## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C06-0361

Respondent: Joseph R. Vinagro Properties, LLC

<b>GRAVITY OF VIOLATION</b>					
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 a Forested Wetland	Type I (\$ <u>1,000.00</u> Max. Penalty)*	Major	\$ 1,000	1 violation	\$1,000.00
D (1), D(2) and D(3) –Alteration of a Stream	Type I (\$ <u>1,000.00</u> Max. Penalty)*	Major	\$ 1,000	1 violation	\$1,000.00
D (1), D(2) and D(3) –Alteration of a Riverbank Wetland	Type I (\$ <u>1,000.00</u> Max. Penalty)*	Major	\$ 1,000	1 violation	\$1,000.00
<b><i>SUB-TOTAL</i></b>					<b>\$3,000.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$3,000.00**

# PENALTY MATRIX WORKSHEET

CITATION: Alteration of a Forested Wetland  
 VIOLATION NO.: D (1), (2), and (3)

TYPE		
<u>  X  </u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	TYPE III INCIDENTAL 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, filling (in the form of at least soil material, stone, concrete blocks, and other construction materials), grading, and creating soil disturbance within a Forested Wetland, portions of which are 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 Forested Wetland and Riverbank Wetland were in a natural wild condition (i.e., vegetated with trees and shrubs) prior to the 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:** 3 ½ -8 ½ years. A review of April 2003 and April 2008 aerial photographs determined that the alterations occurred after April 2003 and prior to April 2008.
- (F) **Areal extent of the violation:** The aerial extent of the violation is at least 108,050 square feet (approximately 2.5 acres).
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to obtain the appropriate permit from DEM. Respondent was issued a Notice of Intent to Enforce (NIE) by DEM on October 5, 2010 and was required to restore the wetlands by May 1, 2011. The Respondent has failed to comply with the NIE.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation 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 \$ 1,000	TYPE I	TYPE II	TYPE III
---	--------	---------	----------

DEVIATION FROM STANDARD	<b>MAJOR</b>	\$800 to \$1,000 <b>\$1,000</b>	\$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 a Stream

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

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>          </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>          </u> <b>TYPE III</b> <u>INCIDENTAL</u> 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><u>FACTORS CONSIDERED:</u></b>		
Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i>		
<p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by clearing, filling (in the form of at least soil material, stone, and construction materials), grading and culverting within a Stream. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> The Stream was in a natural wild condition.</p> <p>(C) <b>Amount of the pollutant:</b> Not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> 3 ½ -8 ½ years. A review of April 2003 and April 2008 aerial photographs determined that the alterations occurred after April 2003 and prior to April 2008.</p> <p>(F) <b>Areal extent of the violation:</b> The aerial extent of the violation is at least 440 linear feet of Stream (approximately 2,200 square feet).</p> <p>(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> Respondent failed to obtain the appropriate permit from DEM. Respondent was issued a Notice of Intent to Enforce (NIE) by DEM on October 5, 2010 and was required to restore the wetlands by May 1, 2011. The Respondent has failed to comply with the NIE.</p> <p>(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> Not utilized for this calculation.</p> <p>(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 Respondent had complete control over the occurrence of the violation and had an obligation to protect the wetlands on the property.</p> <p>(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Not utilized for this calculation.</p>		
<u>  X  </u> <b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 1,000		<b>TYPE I</b>	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$800 to \$1,000 <b>\$1,000</b>	\$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 a Riverbank Wetland  
 VIOLATION NO.: D (1), (2) and (3)

TYPE		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by clearing, filling (in the form of at least soil material, stone, concrete blocks, and other construction materials), grading, and creating soil disturbance within Riverbank Wetland. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> The Riverbank Wetland was in a natural wild condition (i.e., vegetated with trees and shrubs) prior to the alteration.</p> <p>(C) <b>Amount of the pollutant:</b> Not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> 3 ½ -8 ½ years. A review of April 2003 and April 2008 aerial photographs determined that the alterations occurred after April 2003 and prior to April 2008.</p> <p>(F) <b>Areal extent of the violation:</b> The aerial extent of the violation is at least 28,275 square feet (approximately 0.65 acres) of Riverbank Wetland.</p> <p>(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> Respondent failed to obtain the appropriate permit from DEM. Respondent was issued a Notice of Intent to Enforce (NIE) by DEM on October 5, 2010 and was required to restore the wetlands by May 1, 2011. The Respondent has failed to comply with the NIE.</p> <p>(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> Not utilized for this calculation.</p> <p>(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 Respondent had complete control over the occurrence of the violation and had an obligation to protect the wetlands on the property.</p> <p>(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Not utilized for this calculation.</p>		
<u>  X  </u> <b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 1,000	<b>TYPE I</b>	<b>TYPE II</b>	<b>TYPE III</b>
---	---------------	----------------	-----------------

DEVIATION FROM STANDARD	<b>MAJOR</b>	\$800 to \$1,000 <b>\$1,000</b>	\$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