

- (3) The *Certificate of Organization* for Crompton Meadows, LLC was revoked by the Rhode Island Secretary of State on 11 September 2023. Charles Anderson signed the Permit on behalf of Crompton Meadows, LLC in his capacity as Member of the company. John O. Mancini, Esq. is the last known Resident Agent for the company.
- (4) DiCenzo, Inc. (“Operator”) is the operator in charge of construction and site activities as indicated by the Notice of Start of Construction received by RIDEM on or about 1 May 2020.
- (5) The Permit and applicable state regulations require Owners, Operators, and Permittees to:
 - (a) maintain and repair all soil erosion and sediment controls (“SESCs”) as necessary to remain in effective operating condition.
 - (b) maintain all SESC inspection, maintenance, and repair records on site and available for RIDEM inspection for the duration of Permit coverage.
- (6) On 15 March 2023, RIDEM inspected the Property. The inspection revealed that:
 - (a) SESC along the eastern portion were damaged and missing or buried beneath earthen material for approximately 317 linear feet as evidenced by observation and photographs.
 - (b) no SESC inspection, maintenance, and repair records were on site and available for RIDEM.
- (7) On 18 July 2023, RIDEM inspected the Property. The inspection revealed that the SESC along the eastern portion were failed with heavy sedimentation observed and photographed beyond the approved location of the SESC.
- (8) Upon information and belief, as of the date of the NOV, Respondents have failed to correct the noncompliance described in sections C (6) and C (7) 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 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.

- (2) **Rhode Island’s *Water Quality Regulations (250-RICR-150-05-1) (“WQ Rules”)***
 - (a) **Part 1.13(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of an approval issued by RIDEM.
 - (b) **Part 1.18(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (3) **Rhode Island’s *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1) (“RIPDES Rules”)***
 - (a) **Part 1.14(B)(1)** – requiring the permittee to comply with all conditions of a permit issued by RIDEM.
 - (b) **Part 1.14(E)** – requiring the permittee to take all reasonable steps to minimize or prevent a discharge in violation of the permit.
 - (c) **Part 1.14(F)** – requiring the permittee to at all times maintain in good working order and operate as efficiently as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit.

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) **At all times and throughout the life of the project**, inspect, maintain, repair, replace, supplement, or modify any SESC’s as necessary to minimize soil erosion and to achieve compliance with the terms and conditions of the Permit.
- (2) **At all times and throughout the life of the project**, maintain all SESC inspection, maintenance, and repair records on site and available for RIDEM inspection for the duration of Permit coverage.

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:

\$6,000

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Rules") and must be paid to RIDEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:
- (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:
- Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767.
- (b) By wire transfer in accordance with instructions provided by RIDEM.
- (3) Penalties assessed against Respondents in the 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 RIDEM determines that reasonable efforts have been made to comply promptly with the NOV.

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 RIDEM's 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 RIDEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
RIDEM - Administrative Adjudication Division
235 Promenade Street, Room 350
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).

- (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 Part 1.7(B) of RIDEM's *Rules and Regulations for the Administrative Adjudication Division* (250-RICR-10-00-1).
- (2) A copy of each request for hearing must also be forwarded to:
- Maria I. Rice, Esquire
RIDEM - 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 RIDEM'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 regarding any violation set forth herein, then the 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 (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) The 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) Maria I. Rice of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772307 or at maria.rice@dem.ri.gov. All other inquiries should be directed to Patrick J. Hogan of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777119 or at patrick.hogan@dem.ri.gov.

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

By: _____
David E. Chopy, Administrator
RIDEM Office of Compliance and Inspection

DATED: _____

CERTIFICATION

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

Charles Anderson d/b/a Crompton Meadows, LLC
C/o John O. Mancini, Esq.
56 Pine Street, 3RD Floor
Providence, RI 02903

Charles Anderson d/b/a Crompton Meadows, LLC
72 Essex Manor Lane
Saunderstown, RI 02874

DiCenzo, Inc.
C/o W. Thomas Humphreys, Esq.
Resident Agent for Service
Cameron & Mittleman LLP
301 Promenade Street
Providence, RI 02908

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Water Pollution

File No.: OCI-WP-23-45

Respondents: Charles Anderson d/b/a Crompton Meadows, LLC and DiCenzo, Inc.

| GRAVITY OF VIOLATION | | | | | |
|---|--------------------------------------|-----------|---------------------|----------------------------------|----------------|
| SEE ATTACHED "PENALTY MATRIX WORKSHEETS." | | | | | |
| VIOLATION No. & CITATION | APPLICATION OF MATRIX | | PENALTY CALCULATION | | AMOUNT |
| | Type | Deviation | Penalty from Matrix | Number or Duration of Violations | |
| D (1) through D (3) – Failure to maintain SESC's in accordance with the Permit | Type I (\$25,000 Max. Penalty) * | Minor | \$2,500 | 2 violations | \$5,000 |
| D (1), D (2) and D (3)(a) – Failure to maintain SESC inspection records on site | Type III (\$6,250 Max. Penalty) * | Minor | \$1,000 | 1 violation | \$1,000 |
| SUB-TOTAL | | | | | \$6,000 |

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE, OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that RIDEM has not incurred any additional or extraordinary costs during the investigation, enforcement, and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY RULES = \$6,000

PENALTY MATRIX WORKSHEET

CITATION: Failure to maintain SESC's in accordance with the Permit
 VIOLATION Nos.: D (1) through D (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 Part 1.10(A)(1)(b) of the Penalty Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to properly install and maintain SESC's as required by the Permit. Installing and maintaining SESC's as required by the Permit is important to the regulatory program.
- (2) **Environmental conditions:** The Property is an active residential construction site of approximately 22 acres located in South Branch Pawtuxet River watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (5) **Duration of the violation:** Full duration unknown – at least 2 days. RIDEM documented the violations during inspections conducted at the Property on 15 March 2023 and 18 July 2023.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable or appropriate steps to prevent the noncompliance. Respondents failed to maintain the SESC's to prevent the noncompliance. RIDEM has no knowledge of what steps, if any, Respondents have taken to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **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:** Negligence is attributable to Respondents for failure to comply with the WQ Rules, RIPDES Rules, and the Permit. Respondents had full control over the project and the occurrence of the violation.
- (10) **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 \$25,000 | | TYPE I | TYPE II | TYPE III |
|---|-----------------|--------------------------------------|---------------------|--------------------|
| DEVIATION FROM STANDARD | MAJOR | \$12,500 to \$25,000 | \$6,250 to \$12,500 | \$2,500 to \$6,250 |
| | MODERATE | \$6,250 to \$12,500 | \$2,500 to \$6,250 | \$1,250 to \$2,500 |
| | MINOR | \$2,500 to \$6,250 \$2,500 | \$1,250 to \$2,500 | \$250 to \$1,250 |

PENALTY MATRIX WORKSHEET

CITATION: Failure to maintain SESC inspection records onsite

VIOLATION Nos.: D (1), D (2), and D (3)(a)

| TYPE | | |
|---|---|--|
| <p style="text-align: center;">___ 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;"><u>X</u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p> |
| DEVIATION FROM THE STANDARD | | |
| THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED. | | |
| <p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to maintain inspection records onsite. Maintaining inspection records onsite is important to the regulatory program. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown – at least 1 day. RIDEM inspected the Property on 15 March 2023 and spoke with Delvicario at the time of the inspection. Delvicario did not produce any SESC inspection records during or after RIDEM’s inspection. (6) Areal extent of the violation: Considered, but not utilized for this calculation. <p style="text-align: right; margin-top: 20px;">(continued)</p> | | |

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the noncompliance. Delvicario informed RIDEM's inspector that he did not have any written records of the inspections but would have his engineer provide them. To date, Respondents have not provided any SESC inspection records to RIDEM to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **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:** Negligence is attributable to Respondents for failure to comply with the WQ Rules, RIPDES Rules, and the Permit. Respondents had full control over the project and the occurrence of the violation.
- (10) **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 \$25,000 | | TYPE I | TYPE II | TYPE III |
|---|-----------------|----------------------|---------------------|------------------------------------|
| DEVIATION FROM STANDARD | MAJOR | \$12,500 to \$25,000 | \$6,250 to \$12,500 | \$2,500 to \$6,250 |
| | MODERATE | \$6,250 to \$12,500 | \$2,500 to \$6,250 | \$1,250 to \$2,500 |
| | MINOR | \$2,500 to \$6,250 | \$1,250 to \$2,500 | \$250 to \$1,250 \$1,000 |