

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

**IN RE: The Gerald P Zarrella Trust**

**FILE NO.: OCI-FW-17-110**

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 DEM's jurisdiction.

B. Administrative History

On 8 August 2017, a DEM agent advised Gerald P Zarrella (“Zarrella”) in a telephone call of a complaint involving alterations to freshwater wetlands on the property that is the subject of this Notice of Violation (“NOV”). The DEM agent warned him to cease work in wetlands and attempted to arrange an inspection of the property. Zarrella stated that he would not allow the DEM to inspect the property until his consultant, Scott Rabideau (“Rabideau”), had been to the property. On 27 October 2017, the DEM inspected the property. Zarrella was present at the beginning of the inspection and Rabideau was present throughout the inspection. On 20 March 2018, the DEM met with Rabideau to discuss a wetland restoration and farm plan sketch for the property. Rabideau stated that Zarrella hoped to be considered a farmer and therefore be allowed to continue to alter/maintain the wetlands for “agri-tourism” purposes, and Rabideau stated that the necessary paperwork was submitted to the DEM’s Division of Agriculture. Review of the plan revealed that the restoration involved the planting of shrubs in a portion of the altered wetlands, but that many of the wetlands would be maintained in its altered condition. The DEM has determined that even if Zarrella is a farmer, most of the alterations required a permit from the DEM. As of the date of the NOV, Respondent has not applied to the DEM for a permit and has not restored the wetlands.

C. Facts

- (1) The property is located along and near the terminus of Gerald’s Farm Drive, approximately 1,500 feet west of Narrow Lane, and approximately 1,430 feet from the intersection of Narrow Lane and South Road, Assessor’s Plat 13, Lot 30 in the Town of Exeter, Rhode Island (the “Property”).
- (2) The Gerald P Zarrella Trust (the “Trust”) owns the Property. Zarrella is the Trustee of the Trust.

- (3) On 15 December 2004, Zarella submitted to the DEM an application for work proposed within or near freshwater wetlands on lots that surround the Property (the “Application”). The plan submitted with the Application showed extensive wetlands on the Property and proposed altering wetlands on the surrounding lots to construct 4 residential dwellings. The Application did not propose altering any wetlands on the Property.
- (4) On 23 November 2005, the DEM issued an Insignificant Alteration Permit (the “Permit”) to Zarella authorizing the alteration of certain wetlands on the lots that surround the Property.
- (5) On 27 October 2017, the DEM inspected the Property. The inspection revealed the following:
  - (a) At least clearing, stumping, grubbing, excavating, soil disturbances, grading, filling (with at least soil, loam, rocks, and boulders), construction (of at least stone walls, roads, bridges, and other features) and establishing lawn and landscaping within Swamp. These activities have resulted in the unauthorized alteration of approximately 3 acres of freshwater wetland;
  - (b) At least filling and lining (with soil, rocks, and boulders), grading, diverting, and creating disturbances within a Stream. These activities have resulted in the unauthorized alteration of approximately 9,000 square feet (along approximately 650 linear feet of channel) of freshwater wetland; and
  - (c) At least clearing, stumping, grubbing, excavating (of rocks and boulders), soil disturbances, filling (with at least soil, gravel, rocks, and loam), and construction (of at least stone walls, roads, parking and storage areas, and other landscaping features) within Perimeter Wetlands (“PW”) and Riverbank Wetlands (“RBW”) (portions overlapping). These activities have resulted in the unauthorized alteration of approximately 1.24 acres of freshwater wetland.
- (6) The activities were undertaken beyond the limits of disturbance authorized in the Permit and in non-compliance the Permit.
- (7) The activities described in Fact C (5) above were not exempt in accordance with the Rhode Island Code of Regulations titled *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1)* (the “Freshwater Wetlands Regulations”), Rule 6.00 (recently amended to Part 1.6).
- (8) Respondent did not receive a permit from the DEM to alter the freshwater wetlands on the Property in the areas described in Fact C (5) 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) **Freshwater Wetland Regulations, Rule 5.01 (recently amended to Part 1.5A.1)** – 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) **IMMEDIATELY** cease and desist from any further alteration of the above described freshwater wetlands.
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

**RESTORATION REQUIREMENTS**

- (3) Prior to the commencement of restoration install a continuous uninterrupted line of staked haybales, silt fence, or other acceptable soil erosion/sediment control devices between all existing disturbed surfaces/areas to be restored and any adjacent undisturbed freshwater wetlands. Prior to any restoration work within the watercourse, appropriate log-and-hay check-dams must be installed within the affected channel immediately downstream of the required restoration work zone. Downstream of the log-and-hay check-dams, haybale check-dams must be installed for an adequate distance and at appropriate intervals to ensure the prevention of any further adverse impacts to downstream wetland resources.
- (4) Remove all unauthorized fill material including: soil material, stones/rocks and boulders, lawn and landscaping amenities, all structures (including 2 bridges, trellis, gazebo, patio, firepit, flag pole, lighting, stone walls, all driveway components) and any stored materials from the Swamp, Stream, PW and RBW. All fill material that is removed must be deposited in an appropriate upland location, outside of all wetlands. Within affected Swamp areas, unauthorized fill must be removed down to original grade, to an elevation where original native hydric (organic) soils are encountered, and the area restored to the conditions that existed prior to the initiation of the unauthorized alterations, including the creation of irregular topography (at the direction of the DEM) throughout the altered Swamp. If, following fill removal, an adequate **organic** (hydric) soil substrate is not present (i.e., if it had been previously excavated/removed), then the areas of concern must be further excavated and an appropriate amount of high-organic

plantable soil (6-inch minimum) must be applied to re-establish the correct Swamp elevations and hydrologic regime. All fill material must be removed from the Stream and original grades re-established to allow for unimpeded flow into undisturbed downstream locations (see Number 5 below). Within the affected PW and RBW areas, unauthorized fill material must be removed down to original grade, to match the elevations of the surrounding undisturbed landscape (if existing). All disturbed surface areas within the affected/restored Swamp must be seeded with a wetland seed mix, and all disturbed surfaces within the restored PW and RBW areas must be seeded with a wildlife conservation seed mixture. A thick mat of straw mulch, which is free of any contaminants that could promote the spread of invasive plant species, must also be applied over all disturbed surfaces to provide stabilization. All restoration work within the Stream and Swamp features must be undertaken during an accepted “low flow” period (generally July 1 - October 31).

- (5) Re-establish the altered Stream channel in its original location and conditions. All rock and boulders lining the channel and placed within the channel must be removed and the proper grade restored to allow the Stream to flow freely and feed into the original (currently undisturbed) channel. All disturbed streambed and side slope areas must be covered with plantable soil material (4-inch minimum), as needed, to re-establish natural conditions within the areas of concern. The channel bottom must then be seeded with a proper wetland seed mixture and side slopes with a wildlife conservation seed mixture. The bottom and side slopes of the restored Stream channel must then be covered with an appropriate biodegradable erosion control matting material (e.g., jute mesh). All restoration work within the Stream must be undertaken during an accepted “low flow” period (generally July 1 - October 31).
- (6) Upon completion of the work required in subsections 4 and 5 above, contact the DEM to inspect and approve the final grades **prior to continuing with restoration work.**
- (7) Balled and burlapped or transplanted shrub species must be planted in interspersed fashion 5 feet on center, 3 feet tall after planting, throughout the altered portions of the Swamp, on slightly raised mounds. Shrub species must include an equal distribution of at least 3 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*

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, 4 feet tall after planting, throughout the altered portions of the PW and RBW. Tree species must include an equal distribution of at least 3 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*  
Black birch, *Betula lenta*  
Gray birch, *Betula populifolia*  
American beech, *Fagus grandifolia*

Balled and burlapped or transplanted shrub species must be planted in interspersed fashion 5 feet on center, 3 feet tall after planting, throughout the altered portions of the PW and RBW. Shrub species must include an equal distribution of at least 4 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*  
Highbush blueberry, *Vaccinium corymbosum*  
Lowbush blueberry, *Vaccinium angustifolium*  
Inkberry, *Ilex glabra*  
Sweet pepperbush, *Clethra alnifolia*  
Bayberry, *Myrica pennsylvanica*  
Witchhazel, *Hamamelis virginiana*

Balled and burlapped or transplanted evergreen screening tree species must be planted in a straight line, 8 feet on center, 5 to 6 feet tall after planting, along the entire outer (landward) edge of the above-described planting area. The tree species must include at least 2 of the following selections:

Northern white cedar, *Thuja occidentalis*  
White pine, *Pinus strobus*  
White spruce, *Picea glauca*  
Eastern hemlock, *Tsuga canadensis*  
Red cedar, *Juniperus virginiana*

- (8) If any of the required plantings fail to survive at least 2 full years from the time they have been planted, replant and maintain the same plant species until such time that survival is maintained over 2 full years.
- (9) All areas of disturbed surface soils within affected PW and RBW and/or immediately adjacent disturbed upland zones shall be covered with an appropriate plantable soil (if necessary), seeded with a wildlife conservation grass seed mixture and covered with a mat of loose straw mulch.
- (10) 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 or improvements are allowed within the restored wetland areas, or within any other freshwater wetlands on the subject property, without first obtaining a valid permit from the DEM.
- (11) All required restoration work to be performed within Swamp and Stream must be completed during an appropriate low flow period (July 1 through October 31).
- (12) Upon stabilization of all disturbed areas, all non-biodegradable erosion and sediment controls must be removed from the freshwater wetlands. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area, outside of all freshwater wetlands.
- (13) All the restoration work described above must be completed by **31 May 2019**.

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:

**\$30,000**

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondent 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.

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'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 the DEM'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  
DEM - Administrative Adjudication Division  
235 Promenade Street, Suite 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); **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 Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* Part 1.7B.

- (2) A copy of each request for hearing must also be forwarded to:

Tricia Quest, 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 the 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 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) An original signed copy of the NOV is being forwarded to Town of Exeter, Rhode Island 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) 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) Tricia Quest of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David Chopy of the DEM's Office of Compliance and Inspection at (401) 222-1360 extension 7400.

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  
Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

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

The Gerald P Zarrella Trust  
c/o Gerald P Zarrella, Trustee  
P.O. Box 1506  
East Greenwich, RI 02818

by Certified Mail.

\_\_\_\_\_



# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS  
 File No.: OCI-FW-17-110  
 Respondent: The Gerald P Zarrella Trust

## 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) and D (2) Wetland Alterations – Fact C(5)(a)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) Wetland Alterations – Fact C(5)(b)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) Wetland Alterations – Fact C(5)(c)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
<b><i>SUB-TOTAL</i></b>					<b>\$30,000</b>

\*Maximum Penalties represent the maximum penalty amounts 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 Respondent has 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 the DEM 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 REGULATIONS = \$30,000**

# PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations

VIOLATION NO.: D (1) and D (2) – Fact C(5)(a)

TYPE		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by at least clearing, stumping, grubbing, excavating, soil disturbances, grading, filling (with at least soil, loam, rocks, and boulders), construction (of at least stone walls, roads, bridges, and other features) and establishing lawn and landscaping within Swamp. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> The Property is approximately 13 acres. Prior to the alterations, the wetlands were forested and undisturbed with a dense layer of understory vegetation with a dominant presence of berry-providing shrubs, and with an emergent plant community in the southeastern corner. The Stream was natural and undisturbed. The Swamp was very stony, with a seasonally flooded habitat and vegetated with at least: red maple, yellow birch, highbush blueberry, sweet pepperbush, briar, sphagnum moss, arrow-wood, black gum, cinnamon fern, swamp azalea, white oak, and winterberry, with Canada rush and sedges in the emergent plant community.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – at least approximately 9½ years. The DEM’s review of aerial photographs showed that some of the alterations were present as of April 2009.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 3 acres.</li> </ol>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. Respondent applied to the DEM to alter wetlands on lots that surround the Property, and the plan submitted with the application identified the wetlands on the Property that are the subject of the NOV. The Permit clearly stated that changes or revisions to the project that would alter freshwater wetlands were not authorized without a permit from the DEM. Respondent proceeded to alter the wetlands on the Property without applying for any permits from the DEM. Respondent has taken no steps to mitigate the noncompliance. On 27 October 2017, the DEM inspected the Property. Zarrella was present at the beginning of the inspection and Rabideau was present throughout the inspection. On 20 March 2018, the DEM met with Rabideau to discuss a wetland restoration and farm plan sketch for the property. Rabideau stated that Zarrella hoped to be considered a farmer and be allowed to continue to maintain the wetlands for "agri-tourism" purposes. Rabideau stated that the necessary paperwork was submitted to the DEM's Division of Agriculture. Review of the plan revealed that the only restoration proposed was the planting of shrubs in a portion of the altered wetlands and that the swamp would be maintained in its altered condition. As of the date of the NOV, Respondent has not applied to the DEM for a permit or restored the wetlands.
- (8) **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.
- (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:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Property and knowledge of the Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The DEM determined that even if Zarrella is considered a farmer, pursuant to Rhode Island's *Freshwater Wetlands Act* most of the alterations required a permit from the DEM.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$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	\$500 to \$1,000	\$100 to \$500

# PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations

VIOLATION NO.: D (1) and D (2) – Fact C(5)(b)

TYPE		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by at least filling and lining (with soil, rocks, and boulders), grading, diverting, and creating disturbances within a Stream. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> The Property is approximately 13 acres. Prior to the alterations, the wetlands were forested and undisturbed with a dense layer of understory vegetation with a dominant presence of berry-providing shrubs, and with an emergent plant community in the southeastern corner. The Stream was natural and undisturbed. The Swamp was very stony, with a seasonally flooded habitat and vegetated with at least: red maple, yellow birch, highbush blueberry, sweet pepperbush, briar, sphagnum moss, arrow-wood, black gum, cinnamon fern, swamp azalea, white oak, and winterberry, with Canada rush and sedges in the emergent plant community.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – at least approximately 7½ years. The DEM’s review of aerial photographs showed that some of the alterations were present as of April 2011.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 9,000 square feet (along approximately 650 linear feet of channel).</li> </ol>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. Respondent applied to the DEM to alter wetlands on lots that surround the Property, and the plan submitted with the application identified the wetlands on the Property that are the subject of the NOV. The Permit clearly stated that changes or revisions to the project that would alter freshwater wetlands were not authorized without a permit from the DEM. Respondent proceeded to alter the wetlands on the Property without applying for any permits from the DEM. Respondent has taken no steps to mitigate the noncompliance. On 27 October 2017, the DEM inspected the Property. Zarrella was present at the beginning of the inspection and Rabideau was present throughout the inspection. On 20 March 2018, the DEM met with Rabideau to discuss a wetland restoration and farm plan sketch for the property. Rabideau stated that Zarrella hoped to be considered a farmer and be allowed to continue to maintain the wetlands for "agritourism" purposes. Rabideau stated that the necessary paperwork was submitted to the DEM's Division of Agriculture. Review of the plan revealed that the only restoration proposed was the planting of shrubs in a portion of the altered wetlands and that the swamp would be maintained in its altered condition. As of the date of the NOV, Respondent has not applied to the DEM for a permit or restored the wetlands.
- (8) **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.
- (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:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Property and knowledge of the Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The DEM determined that even if Zarrella is considered a farmer, pursuant to Rhode Island's *Freshwater Wetlands Act* most of the alterations required a permit from the DEM.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$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	\$500 to \$1,000	\$100 to \$500

# PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations  
 VIOLATION NO.: D (1) and D (2) – Fact C(5)(c)

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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by at least clearing, stumping, grubbing, excavating (of rocks and boulders), soil disturbances, filling (with at least soil, gravel, rocks, and loam), and construction (of at least stone walls, roads, parking and storage areas, and other landscaping features) within Perimeter Wetlands and Riverbank Wetlands (portions overlapping). The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> The Property is approximately 13 acres. Prior to the alterations, the wetlands were forested and undisturbed with a dense layer of understory vegetation with a dominant presence of berry-providing shrubs, and with an emergent plant community in the southeastern corner. The Stream was natural and undisturbed. The Swamp was very stony, with a seasonally flooded habitat and vegetated with at least: red maple, yellow birch, highbush blueberry, sweet pepperbush, briar, sphagnum moss, arrow-wood, black gum, cinnamon fern, swamp azalea, white oak, and winterberry, with Canada rush and sedges in the emergent plant community.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – at least approximately 9½ years. The DEM’s review of aerial photographs showed that some of the alterations were present as of April 2009.</li> <li>(6) <b>Areal extent of the violation:</b> Approximately 1.24 acres.</li> </ol>		
(continued)		



(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. Respondent applied to the DEM to alter wetlands on lots that surround the Property, and the plan submitted with the application identified the wetlands on the Property that are the subject of the NOV. The Permit clearly stated that changes or revisions to the project that would alter freshwater wetlands were not authorized without a permit from the DEM. Respondent proceeded to alter the wetlands on the Property without applying for any permits from the DEM. Respondent has taken no steps to mitigate the noncompliance. On 27 October 2017, the DEM inspected the Property. Zarrella was present at the beginning of the inspection and Rabideau was present throughout the inspection. On 20 March 2018, the DEM met with Rabideau to discuss a wetland restoration and farm plan sketch for the property. Rabideau stated that Zarrella hoped to be considered a farmer and be allowed to continue to maintain the wetlands for "agritourism" purposes. Rabideau stated that the necessary paperwork was submitted to the DEM's Division of Agriculture. Review of the plan revealed that the only restoration proposed was the planting of shrubs in a portion of the altered wetlands and that the swamp would be maintained in its altered condition. As of the date of the NOV, Respondent has not applied to the DEM for a permit or restored the wetlands.
- (8) **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.
- (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:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Property and knowledge of the Freshwater Wetland Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The DEM determined that even if Zarrella is considered a farmer, pursuant to Rhode Island's *Freshwater Wetlands Act* most of the alterations required a permit from the DEM.

<u>X</u> MAJOR	MODERATE	MINOR
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