

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

**IN RE: Christopher R. Lavigne
Courtney L. Lavigne**

FILE NO.: OCI-FW-20-110

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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM’s jurisdiction.

B. Administrative History

On 28 July 2016, DEM issued an Expedited Citation Notice (the “ECN”) to Christopher R. Lavigne (“Lavigne”) alleging unauthorized alterations to freshwater wetlands on the property that is the subject of this Notice of Violation (“NOV”). The ECN required specific actions to restore the freshwater wetlands and assessed an administrative penalty of \$1,000. Lavigne restored the freshwater wetlands and paid the penalty as required in the ECN. On 27 April 2017, DEM issued a Notice of Compliance to Lavigne. In the notice, DEM stated in bold lettering that no alterations to freshwater wetlands on the property are authorized without a permit from DEM. The violations that are alleged in the NOV are the same freshwater wetlands that were the subject of the ECN.

C. Facts

- (1) The property is located approximately 330 feet west of Carriage Cove Road, at House No. 4 Carriage Cove Court, approximately 550 feet south of the intersection with Shady Valley Road, between Utility Pole Nos. 4 and 6, Assessor’s Plat 41, Lot 1.001 in Coventry, Rhode Island (the “Property”).
- (2) Respondents own the Property.
- (3) On 14 July 2020, DEM inspected the Property. The inspection revealed the following:
 - (a) At least clearing, filling (with boulders, riprap, soil and concrete pad) and construction of a dock and boat lift within a Pond and the associated Swamp fringe/shoreline. These activities have resulted in the alteration of approximately 1,200 square feet of freshwater wetland;

- (b) At least clearing, grubbing, stumping, grading, filling, creating soil disturbances, establishing maintained lawn, and installing electrical conduit and up-lighting within Perimeter Wetland. These activities have resulted in the alteration of approximately 8,500 square feet of freshwater wetland; and
 - (c) At least mowing and maintaining a separate portion of the Perimeter Wetland. This activity has resulted in the alteration of approximately 4,200 square feet of freshwater wetland.
- (4) On or about 11 December 2020, Lavigne applied to DEM for a freshwater wetland permit to maintain most of the alterations described in subsection C (3) above.
 - (5) The activities described in subsection C (3) above are not exempt in accordance with the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1)* [effective 16 July 2014 to Current] (the “Wetland Rules”).
 - (6) Respondents did not receive a permit from DEM to alter the freshwater wetlands in the areas described in subsection C (3) above.

D. Violation

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

- (1) **R.I. Gen. Laws Section §2-1-21** – prohibiting activities which may alter freshwater wetlands without a permit from DEM.
- (2) **Wetland Rules, Part 1.5(A)(1)** – prohibiting activities which may alter freshwater wetlands without a permit from DEM, unless the activities are exempt in accordance with Part 1.6.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), Respondents are hereby ORDERED to:

- (1) Cease and desist 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

- (3) Prior to the commencement of restoration install a continuous uninterrupted line of staked biodegradable filter logs (e.g., straw wattles, fiber logs, filter socks), or silt fence between all existing altered or improved areas to be restored and the adjacent 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 activities, and until such time that all surrounding areas are properly stabilized. At the discretion and direction of representatives of DEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
- (4) Remove all unauthorized fill material from the Pond and associated fringe Swamp areas (all locations), including but not limited to soil material; rocks, stone rip-rap, and boulders (including shoreline anchoring materials), all components of maintained lawn, all components of the concrete pad, and all components of the dock and boat lift facilities. All unauthorized fill material must be removed down to an elevation that matches the adjacent undisturbed Pond bottom and Swamp surface grades, to a point where original native hydric (organic) soils are encountered. All fill material that is removed must be deposited in an appropriate upland location, outside of all wetlands.
- (5) Following fill removal operations, affected Swamp areas must be re-established and restored to the conditions that existed prior to the initiation of the unauthorized alterations. If, following fill removal, an adequate organic (hydric) soil substrate is not present (that is, if it had been previously removed by Respondents), the areas of concern must be further excavated and an appropriate amount of high-organic plantable soil (6 inches minimum) must be applied to re-establish the correct Swamp elevations and hydrologic regime in the areas of concern, matching those of the adjacent undisturbed Swamp. Prior to proceeding to the next restoration step, final grades must be reviewed and approved by DEM.
- (6) All disturbed surface areas within the affected/restored fringe Swamp in the areas of concern must be seeded with a wetland seed mix, and then stabilized with a secured jute mesh type material. The restored Swamp surface areas must then be planted with appropriate trees and shrubs as specified below.
- (7) All restoration work interior of the Pond limits must be undertaken during the typical winter Pond draw-down period or another acceptable low-water period. Aside from required plantings (specified below), all restoration work within the altered fringe Swamp must be undertaken during the same Pond drawdown period or other acceptable low-water period (generally July 1 – October 31).

- (8) Remove all fill material and improvements from the affected portions of the Perimeter Wetland, including soil material, electrical conduit and lighting facilities, and all components of maintained landscaped areas and lawn. All fill must be removed down to original elevations, to match the grade of the adjacent undisturbed natural areas. All disturbed surface areas within the affected/restored Perimeter Wetland in the areas of concern must be seeded with a wildlife conservation seed mix and then stabilized through the application of a thick mat of loose straw mulch, which is free of any contaminants that could promote the spread of invasive plant species. The restored Perimeter Wetland surface areas must then be planted with appropriate trees and shrubs as specified below. All fill material that is removed from the Perimeter Wetland must be deposited in an appropriate upland location, outside of all wetlands.
- (9) Following fill removal, re-establishment of proper wetland surface grades, and appropriate stabilization of restored wetland areas, plant trees and shrubs within the altered/restored fringe Swamp surface areas as outlined below. The trees and shrubs to be planted in these locations must be obtained from nursery stock that has been raised in hydric conditions.

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 8 feet on center, 4 to 5 feet tall after planting, throughout the areas defined above. Tree species must include an equal distribution of at least 2 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*
White Pine, *Pinus strobus*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion 3 feet on center, 3 feet tall after planting, throughout the area defined above. 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*
Maleberry, *Lyonia lingustrina*

- (10) Plant all disturbed/altered areas within the affected portions of the Perimeter Wetland with trees and shrubs, as outlined below.

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 areas defined above. Tree species must include an equal distribution of at least three 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*
Gray birch, *Betula populifolia*
Black birch, *Betula lenta*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion 5 feet on center, 3 feet tall after planting, throughout the area defined above. 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*
Inkberry (Gallberry holly), *Ilex glabra*
Sweet pepperbush, *Clethra alnifolia*
Bayberry, *Myrica pennsylvanica*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

- (11) In addition, balled and burlapped or transplanted evergreen 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 Perimeter Wetland. The tree species to be utilized for this screening line must include at least 2 of the following selections:

Northern white cedar, *Thuja occidentalis*
White pine, *Pinus strobus*
Pitch Pine, *Pinus rigida*
Eastern hemlock, *Tsuga canadensis*
Red cedar, *Juniperus virginiana*

- (12) If any of the required plantings fail to survive at least 2 full growing seasons from the time they have been planted, replant and maintain the same plant species until such time that survival is maintained over 2 full growing seasons.
- (13) All areas of disturbed surface soils shall be covered with plantable organic soil (4 inches minimum, if necessary), seeded with a wetland seed mix (within restored Swamp surface areas) or a wildlife conservation grass seed mixture (within Perimeter Wetland), and covered with a mat of loose hay mulch (as previously described above).

- (14) Upon final stabilization of disturbed areas, all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) must be removed from the freshwater wetlands. Staked haybales, fiber logs, 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 and/or prior to the contractor vacating the site, all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.
- (15) All restored wetland areas, including replanted areas, must be allowed to re-vegetate 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 valid permit from DEM, unless the activity is exempt under the Wetland Rules.
- (16) All the restoration work described above must be completed on or before **31 October 2021**.

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:

\$17,500

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective 31 December 2001 to Current] (the “Penalty Regulations”) and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check or money order made payable to the “General Treasury – Water & Air Protection Program” and shall be forwarded to DEM’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (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.

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 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 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, 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); **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 Part 1.7(B) of the *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* [effective 27 November 2014 to Current]
- (2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmit, 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 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 the Town of Coventry, Rhode Island wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 2-1-24, as amended.
- (7) 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) Christina Hoefsmit of DEM's Office of Legal Services at (401) 222-6607 or at christina.hoefsmit@dem.ri.gov. All other inquiries should be directed to David E. Chopy at (401) 222-1360 ext. 77400 or at david.chopy@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
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____ 2021
the within Notice of Violation was forwarded to:

Christopher R. Lavigne
4 Carriage Cove Ct.
Coventry, RI 02816

Courtney L. Lavigne
4 Carriage Cove Ct.
Coventry, RI 02816

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS
 File No.: OCI-FW-20-110
 Respondents: Christopher R. Lavigne and Courtney L. Lavigne

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 within Pond and Swamp Fringe – Fact C(3)(a)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$5,000	1 violation	\$5,000
D (1) and D (2) Wetland Alterations within Perimeter Wetland – Fact C(3)(b)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$7,500	1 violation	\$7,500
D (1) and D (2) Wetland Alterations within Perimeter Wetland – Fact C(3)(c)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$5,000	1 violation	\$5,000
SUB-TOTAL					\$17,500

*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 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 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 = \$17,500

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations within Pond and Swamp Fringe – Fact C (3)(a)
 VIOLATION NOs.: D (1) and D (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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands on the Property by at least clearing, filling (with boulders, riprap, soil and concrete pad) and construction of a dock and boat lift within a Pond and associated Swamp fringe/shoreline. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program. (2) Environmental conditions: The Pond and associated Swamp fringe/shoreline was undisturbed prior to the alterations. The fringe of Swamp was narrow in the altered northern third of the Property, and much wider in the unaltered southern two thirds of the Property, where the wetland includes forested Swamp and covers and pockets of emergent and shrub habitats. (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: Approximately 3 years – aerial photographs taken in May 2018 show the unauthorized concrete pad at the Pond edge. Aerial photographs taken in October 2018 show the dock. Aerial photographs taken in April 2019 show the boulders in/along the Pond and the boat lift. (6) Areal extent of the violation: Approximately 1,200 square feet. 		
(continued)		

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- (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. Lavigne had knowledge of the need for a permit from DEM prior to altering the Pond but Respondents failed to apply for a permit. On or about 11 December 2020, Lavigne applied to DEM for a freshwater wetland permit to maintain the alterations to the Pond and associated Swamp/fringe shoreline 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 the Department, or any law which the Department has the authority or responsibility to enforce:** DEM issued an ECN to Lavigne for altering the Pond on 28 July 2016. Lavigne complied with the ECN, including paying the \$1,000 penalty assessed in the ECN.
- (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:** Respondents had complete control over the violation, and the violation was foreseeable. Lavigne had knowledge of the Wetland Rules, yet Respondents failed to apply to DEM for a permit prior to altering the Pond and associated Swamp/fringe shoreline.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<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	MAJOR	\$5,000 to \$10,000 \$5,000	\$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	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations within Perimeter Wetland – Fact C (3)(b)
 VIOLATION NOs.: D (1) and D (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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands on the Property by at least clearing, grubbing stumping, grading, filling, creating soil disturbances, establishing maintained lawn, and installing electrical conduit and up-lighting within Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: A portion of the Perimeter Wetland on the Property was previously altered and restored by Lavigne in 2017, which included the installation of plantings. The restored Perimeter Wetland was to be left alone to naturally revegetate. DEM allowed Lavigne to maintain a cleared access path to the Pond within the Perimeter Wetland. The remaining portion of the Perimeter Wetland on the Property was previously undisturbed (prior to the alterations that are the subject of the NOV) and heavily vegetated with trees and shrubs, including overhanging vegetation to the Pond. (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: Approximately 2 years – aerial photographs taken in April 2019 show clearing and filling within the previously undisturbed portion of the Perimeter Wetland. Aerial photographs taken in Spring 2020 show large portions of the Perimeter Wetland converted to lawn. (6) Areal extent of the violation: Approximately 8,500 square feet. 		
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- (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. Lavigne had knowledge of the need for a permit from DEM prior to altering the Perimeter Wetland but Respondents failed to apply for a permit. On or about 11 December 2020, Lavigne applied to DEM for a freshwater wetland permit to maintain most of the alterations to the Perimeter Wetland 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 the Department, or any law which the Department has the authority or responsibility to enforce:** DEM issued an ECN to Lavigne for altering the Perimeter Wetland on 28 July 2016. Lavigne complied with the ECN, including paying the \$1,000 penalty assessed in the ECN.
- (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:** Respondents had complete control over the violation, and the violation was foreseeable. Lavigne had knowledge of the Wetland Rules, yet Respondents failed to apply to DEM for a permit prior to altering the Perimeter Wetland.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<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	MAJOR	\$5,000 to \$10,000 \$7,500	\$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 within Perimeter Wetland – Fact C (3)(c)
 VIOLATION NOs.: D (1) and D (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;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </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 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 Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands on the Property by mowing and maintaining within Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program (2) Environmental conditions: A portion of the Perimeter Wetland on the Property was previously altered and restored by Lavigne in 2017, which included the installation of plantings. The restored Perimeter Wetland was to be left alone to naturally revegetate. DEM allowed Lavigne to maintain a cleared access path to the Pond within the Perimeter Wetland. The remaining portion of the Perimeter Wetland on the Property was previously undisturbed (prior to the alterations that are the subject of the NOV) and heavily vegetated with trees and shrubs, including overhanging vegetation to the Pond. (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: Approximately 2½ years – aerial photographs taken in October 2018 show mowing of the previously restored portion of the Perimeter Wetland. (6) Areal extent of the violation: Approximately 4,200 square feet. 		
(continued)		

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- (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. Lavigne had knowledge of the need for a permit from DEM prior to altering the Perimeter Wetland but Respondents failed to apply for a permit. On 24 June 2020, Lavigne submitted electronic correspondence to DEM stating that to mitigate the noncompliance he ceased mowing the Perimeter Wetland. On or about 11 December 2020, Lavigne applied to DEM for a freshwater wetland permit to maintain most of the alterations to the Perimeter Wetland to further 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 the Department, or any law which the Department has the authority or responsibility to enforce:** DEM issued an ECN to Lavigne for altering the Perimeter Wetland on 28 July 2016. Lavigne complied with the ECN, including paying the \$1,000 penalty assessed in the ECN.
- (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:** Respondents had complete control over the violation, and the violation was foreseeable. Lavigne had knowledge of the Wetland Rules, yet Respondents failed to apply to DEM for a permit prior to altering the Perimeter Wetland.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<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	MAJOR	\$5,000 to \$10,000 \$5,000	\$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	\$500 to \$1,000	\$100 to \$500