

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

IN RE: Frederickson Farms, LLC

**FILE NOs.: OCI-FW-17-15
and C13-0109**

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 Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On December 16, 2013, a RIDEM inspector spoke with Howard Frederickson (“Frederickson”) at the property that is the subject of this Notice of Violation (“NOV”). RIDEM’s inspector informed Frederickson about activities that were observed within the freshwater wetlands on the property and advised Frederickson to cease further activity within the wetlands. On August 31, 2015, RIDEM issued a Warning Letter (“WL”) by certified mail to Respondent. The WL stated that unauthorized activities had been undertaken on the property within freshwater wetlands associated with an intermittent stream and required Respondent to take specific actions to restore the wetlands. The WL also stated that a portion (approximately 175 linear feet) of the stream had been altered/eliminated some time after April 2003; however, RIDEM was not able to determine the party who had altered this portion of the stream. On September 8, 2015, the WL was delivered to Respondent’s registered agent. Respondent did not respond to the WL. Following the receipt of several complaints, on April 7, 2017 and April 14, 2017, RIDEM representatives again spoke with Frederickson at the property and informed Frederickson of certain limited actions required to restore the wetlands. Following the receipt of several new complaints, RIDEM undertook a detailed review of aerial photographs and the prior case history. Based on the result of this review, on October 17, 2018, RIDEM issued a Notice of Intent to Enforce (“NIE”) by certified mail to Respondent. The NIE stated that unauthorized activities were undertaken within freshwater wetlands on the property, including the piping of a portion of the stream and required Respondent to take specific actions to restore the wetlands. On October 22, 2018, the NIE was delivered to Respondent’s agent. As of the date of the NOV, Respondent has not responded to or complied with the NIE.

C. FACTS

- (1) The property is located between 40 feet and 265 feet west of Chopmist Hill Road (Route 102), at 985 Chopmist Hill Road, approximately 460 feet southwest of the intersection of Chopmist Hill Road and Hartford Pike (Route 101), Assessor’s Plat 27, Lot 1, in Scituate, Rhode Island (“Property”).

- (2) Respondent owns the Property. Respondent acquired the Property on March 26, 2014.
- (3) Frederickson is identified as a manager of Respondent and has had an ownership interest in the Property since at least June 11, 2013.
- (4) On December 16, 2013 and April 29, 2014, RIDEM's Office of Compliance & Inspection ("OC&I") inspected the Property in response to a complaint of unauthorized wetland alterations referred to OC&I by RIDEM's Office of Water Resources ("OWR"). The inspections revealed the following:
 - (a) An Intermittent Stream ("Stream") was present on the Property, along with an associated Riverbank Wetland ("RBW").
 - (b) At least clearing, stumping/grubbing, and grading had taken place within portions of the RBW situated to the north of the Stream.
 - (c) A portion of the Stream was piped/culverted. The pipe was 24-inch corrugated plastic ("Plastic Pipe") and extended for approximately 175 feet. The pipe was buried under soil material that was covered with decomposed plant material and live (woody) vegetation at the surface (demonstrating that it had been in place for some time).
 - (d) OC&I was unable to determine the party responsible for installing the Plastic Pipe.
- (5) On January 26, 2017, April 7, 2017 and April 14, 2017, in response to numerous public complaints, OC&I inspected the Property, met with Frederickson on at least 2 occasions and documented the findings described in subsection C (4) above. New unauthorized wetland alterations were also observed on the Property during these inspections and, following further investigation, resulted in the issuance of the NIE.
- (6) Since the issuance of the NIE, OC&I received numerous complaints, all related to alleged additional/new unauthorized alterations to the Stream and RBW. A review of aerial photographs by OC&I revealed that Respondent continued to alter freshwater wetlands on the Property without the prior authorization of RIDEM after the NIE was delivered to Respondent. Based on OC&I's inspections and review of aerial photographs, OC&I has determined that Respondent undertook the following activities between April 2014 and April 2021:
 - (a) Eliminated portions of the Stream through clearing, filling (in the form of at least soil material), grading, and installation of a culvert pipe. Based upon a review of aerial photographs and information gathered during inspections of the Property, this culvert pipe was installed between April 2014 and April 2018. These activities resulted in the unauthorized alteration of approximately 165 linear feet (990 square feet) of the Stream channel.

- (b) Cleared, stumped/grubbed, filled (in the form of soil material, stones/boulders, stored equipment, and materials, and building components), graded, created surface disturbance, stored equipment and materials, constructed a stone wall, installed impervious (asphalt pavement) driveways and parking areas, constructed a metal storage/garage building, and installed a well and water service line within the RBW. Based upon a review of aerial photographs and information gathered during inspections of the Property, these unauthorized alterations took place between April 2014 and April 2018. These activities resulted in the alteration of approximately 71,000 square feet (1.63 acres) of freshwater wetland, at least portions of which are unauthorized.
 - (c) Discharged uncontrolled and untreated surface (stormwater) runoff into at least the RBW, emanating from a cleared/disturbed surface area encompassing approximately 4.4 acres, of which over 1.9 acres are comprised of impervious surfaces, without first obtaining a permit from RIDEM.
- (7) RIDEM determined that Respondent meets the definition of a farmer, as that term is defined in Section 2-1-22(j) of the *Freshwater Wetlands Act* (“FWW Act”).
 - (8) RIDEM determined that the activities described in subsection C (6) were not normal farming activities as that term is defined in Section 2-1-22(i) of the FWW Act (“Normal Farming Activities”) and therefore were not exempt from the FWW Act.
 - (9) The activities described in subsection C (6) were not exempt in accordance with Rhode Island’s *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (“FWW Rules”).
 - (10) Respondent did not receive a permit from RIDEM to alter the freshwater wetlands on the Property in the areas described in subsection C (6).

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 RIDEM.
- (2) **Rhode Island’s Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1) [December 28, 2010 to July 16, 2014], Rule 5.01** – prohibiting activities which may alter freshwater wetlands without a permit from RIDEM, unless the activity is exempt in accordance with Rule 6.00.

- (3) **Rhode Island's Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1) [July 16, 2014 to July 15, 2022], Part 1.5(A)(1)** – prohibiting activities which may alter freshwater wetlands without a permit from RIDEM, unless the activity is 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), 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

- (a) **IMMEDIATELY** cease from any further alterations of freshwater wetlands.
- (b) Prior to the initiation of restoration activities, properly install a continuous, uninterrupted line of appropriate soil erosion/sediment controls (e.g., silt fence, staked haybales and/or biodegradable fiber logs/straw wattles) between any disturbed areas and the remaining exposed portions of the Intermittent Stream. 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 the surrounding areas are properly stabilized. At the discretion and direction of RIDEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect all freshwater wetlands.
- (c) Remove the unauthorized culvert pipe and water line, along with any associated fill material, from those portions of the Stream that were altered without authorization from RIDEM. The Stream must be restored to its original length and character, as generally depicted on the sketch that is attached with the NOV, extending first in a southwesterly direction, then a northwesterly direction, to eventually merge with the undisturbed channel situated at or near the existing stone wall feature (running north/south through the Property). The re-established (restored) Stream channel must be created in a meandering fashion and graded to drain in a generally westerly direction. The Stream channel must be 3 feet wide across the bottom in all locations and both banks of the Stream must be graded to a 3:1 slope (maximum). The channel bottom and sides slopes must be covered with an appropriate plantable soil (4 inches minimum), as needed, seeded with an appropriate seed mixture, and covered with a biodegradable (erosion

control) matting or jute mesh material. Cobblestones (not large rip-rap stone material) may be utilized on the channel bottom in strategic locations to provide some diversity in the substrate character. During restoration activities, as needed, surfaces flows from the concrete pipe outlet(s) adjacent to Route 102, and/or the pre-existing culvert pipe on the Property, must be diverted to the existing Stream channel at or near the existing stone wall along the western limits of work disturbance on the Property, to allow restoration work to be performed under relatively “dry” conditions. All fill material that is removed must be deposited in an appropriate upland location, outside of all freshwater wetlands. **All work must be undertaken during an acceptable low-flow period (generally July 1 - October 31).**

- (d) Remove all unauthorized fill material and improvements, including but not limited to, soil material, well components, components of the metal storage/garage structure, stored equipment and site materials, all components of parking and driveway areas, and all components of constructed stone walls from the RBW. All affected portions of the RBW must be returned to original grades, to match the surface elevations of the surrounding undisturbed areas. All disturbed surfaces must then be seeded with a wildlife conservation seed mixture and covered with a thick mat of spread straw mulch, which is free of any contaminants that could promote the spread of invasive plant species, to provide proper immediate stabilization. All fill material that is removed must be deposited in an appropriate upland location, outside of all freshwater wetlands.
- (e) Following the completion of all grading work, as deemed acceptable by RIDEM, an adequate vegetated buffer zone must be established throughout the restored RBW along both sides of the restored Stream channel, as well as within a semi-circle surrounding both ends (inlet and outlet points) of the pre-existing culvert pipe (see sketch for locations). A minimum 50-foot-wide buffer area, appropriately seeded, and planted with woody trees and shrubs, must be installed in the areas described above. The banks/side slopes of the re-established Stream channel may be included as part of the 50-foot required planted buffer zone. The required buffer zone must be planted with trees and shrubs, as follows:
 - (i) 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 plantings 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 (ashleaf maple), *Acer negundo*
- White ash, *Fraxinus americana*
- White oak, *Quercus alba*
- Northern red oak, *Quercus rubra*

Sassafras, *Sassafras albidum*
Gray birch, *Betula populifolia*
Black birch, *Betula lenta*
American beech, *Fagus grandifolia*

- (ii) 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 plantings must include an equal distribution of at least 4 of the following selections:

Mountain laurel, *Kalmia latifolia*
Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*
Silky dogwood, *Cornus amomum*
Arrowwood (southern), *Viburnum dentatum*
American cranberrybush, *Viburnum trilobum*
Mapleleaf viburnum, *Viburnum acerifolium*
Inkberry, *Ilex glabra*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Sweet pepperbush, *Clethra alnifolia*
Bayberry, *Myrica pennsylvanica*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

- (iii) In addition, balled and burlapped or transplanted evergreen screening tree species must be planted in a straight line, 8 feet on-center (apart), 5 to 6 feet tall after planting, along the outer (landward) edge of the defined buffer zone. The tree species to be utilized for this screening line (described above) must be chosen from the following selections:

Northern white cedar (eastern arborvitae), *Thuja occidentalis*
White pine, *Pinus strobus*
White spruce, *Picea glauca*.

- (f) 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.
- (g) If the remainder of the RBW (i.e., the outer 50-feet on both sides of the Stream) is not being utilized for Normal Farming Activities, the entire RBW (both sides of the Stream) must be restored as described and specified above and below.

- (h) All disturbed surfaces within freshwater wetlands, as well as any surrounding upland areas that may contribute surface runoff to the wetlands, must be properly seeded and stabilized with a mat of loose straw mulch (as described above). If necessary, very steep, or extremely unstable surfaces must be covered with an appropriate erosion control matting of some type (e.g., excelsior matting or jute mesh).
 - (i) Upon final 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.
 - (j) All restored freshwater wetland areas must be allowed to revert to a natural wild condition. Aside from Normal Farming Activities, no future alterations or improvements are authorized within freshwater wetlands on the Property, without first obtaining a permit from RIDEM.
 - (k) All restoration activities associated with the required installation/re-establishment of the Stream channel, including final surface stabilization, must be completed on or before **October 31, 2022**. The remainder of the required wetland restoration, including all necessary buffer plantings, must be completed on or before **May 15, 2023**.
 - (l) Contact RIDEM 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 RIDEM.
- (3) **Within 90 days of receipt of the NOV**, apply to OWR for a permit to discharge stormwater from the Property to the freshwater wetlands (the “Application”).
 - (4) The Application shall be subject to OWR’s review and approval. **Within 30 days of receiving a notification of deficiencies with the Application**, submit to OWR the information necessary to address the deficiencies.
 - (5) Upon receipt of the permit to discharge stormwater, act immediately to implement the terms and conditions of the permit and all aspects of the associated approved plans in a timely fashion, but no later than **May 15, 2023**.

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:

\$20,000

- (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 Regulations") 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 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 RIDEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections 0 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, 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).
 - (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 Rhode Island'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:

Christina Hoefsmit, Esquire
RIDEM - Office of Legal Services
235 Promenade Street, Suite 425
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) An original signed copy of the NOV is being forwarded to the Town of Scituate, 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 Section 2-1-24, as is or 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 RIDEM'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 of RIDEM's Office of Compliance and Inspection at (401) 222-1360, ext. 2777400 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
RIDEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Frederickson Farms, LLC
c/o John J. Bevilacqua, Esquire, Registered Agent
145 Phenix Avenue
Cranston, RI 02920

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: FRESHWATER WETLANDS
 File Nos.: OCI-FW-17-15 and C13-0109
 Respondent: Frederickson Farms, LLC

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) – Wetland Alterations to the Stream	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) through D (3) – Wetland Alterations to the RBW	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
SUB-TOTAL					\$20,000

*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 enjoyed economic benefit from the noncompliance alleged in this enforcement action, in the form of parking facilities and the use of warehouse/storage facilities situated within the wetlands on the Property. The amount of this economic benefit, however, 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 REGULATIONS = \$20,000

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to the Stream

VIOLATION NOs.: D (1) through D (3)

TYPE		
<p><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><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>FACTORS CONSIDERED:</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: Respondent altered and eliminated portions of the Stream, through clearing, filling (in the form of at least soil material), grading, and installation of a culvert pipe. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: Prior to the unauthorized alterations, the portions of the Intermittent Stream that are the subject of the NOV were entirely undisturbed, containing a surface watercourse surrounded by vegetated (woodland) habitat. The Stream is visible on several years of aerial photographs. The current unaltered Stream is visible where it emanates from the end of the unauthorized culvert (pipe) and feeds into an obvious, well-defined channel in a location just east of an existing stone wall. Flow was observed emanating from the end of the unauthorized culvert during inspections of the Property. (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 approximately 5 1/2 years. RIDEM first became aware of the alterations on or about January 26, 2017 when RIDEM inspected the Property. (6) Areal extent of the violation: Approximately 165 linear feet (990 square feet) of Stream channel. 		
(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. On December 16, 2013, a RIDEM inspector spoke with Frederickson at the Property and informed Frederickson about activities that were observed within the freshwater wetlands on the Property and advised Frederickson to cease further activity within the wetlands. The WL notified Respondent of violations of the FWW Act and warned Respondent to undertake no further work within the wetlands on the Property without first obtaining a permit from RIDEM. Frederickson was also verbally warned on at least 2 occasions during that investigation to perform no further work within the wetlands on the Property. Despite the warnings, Respondent further altered the wetlands on the Property, including the culverting (piping), filling over and elimination of the Intermittent Stream. Respondent has taken no steps to mitigate the noncompliance, despite receiving the NIE that required Respondent to stop all activity which has affected, or which could affect all wetlands, and to restore the affected wetlands. Respondent has continued to utilize the unauthorized improvements within the wetlands on the Property and has further altered the Intermittent Stream since the NIE.
- (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, including the Intermittent Stream, were present on the Property and had knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The FWW Act allows RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing or reckless. The alterations to the Intermittent Stream were knowing and willful.

<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 \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to the RBW

VIOLATION NOs.: D (1) through D (3)

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: Respondent altered freshwater wetlands by clearing, stumping/grubbing, filling (in the form of soil material, stones/boulders, stored equipment and materials, and building components), grading, creating surface disturbance, storing equipment and materials, constructing a stone wall, installing impervious (asphalt pavement) driveways and parking areas, constructing a metal storage/garage building, and installing a well and water service line within the RBW. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: Prior to the unauthorized alterations, the RBW that is the subject of the NOV was entirely undisturbed, comprised of mature woodland (forest/shrub) habitat, containing the Intermittent Stream described above. (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 8 1/2 years. RIDEM first became aware of the alterations within the RBW on or about 16 December 2013 when RIDEM inspected the Property and warned Frederickson to cease all unauthorized activities within RBW. (6) Areal extent of the violation: Approximately 71,000 square feet (1.63 acres). 		
(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. On December 16, 2013, a RIDEM inspector spoke with Frederickson at the Property and informed Frederickson about activities that were observed within the freshwater wetlands on the Property and advised Frederickson to cease further activity within the wetlands. The WL notified Respondent of violations of the FWW Act and warned Respondent to undertake no further work within the wetlands on the Property without first obtaining a permit from RIDEM. Frederickson was also verbally warned on at least 2 occasions during that investigation to perform no further work within the wetlands on the Property. Despite the warnings, Respondent further altered the RBW on the Property by at least filling, grading, surface disturbance, stockpiling materials, and creation of impervious driveway/parking areas. Respondent has taken no steps to mitigate the noncompliance, despite receiving the NIE that required Respondent to stop all activity which has affected, or which could affect all wetlands, and to restore the affected wetlands. Respondent has continued to utilize the unauthorized improvements within the wetlands on the Property and has further altered the RBW since the NIE.
- (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, including the RBW, were present on the Property and had knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The FWW Act allows RIDEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing or reckless. The alterations to the RBW were knowing and willful.

<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 \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500