

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

IN RE: SOSCIA HOLDINGS, LLC

**FILE NOs.: OCI-FW-17-126 and
FWW Permit 18-0323**

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 12 December 2017, RIDEM issued a Notice of Intent to Enforce (“NIE”) by certified mail to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to address the violations, including applying for a permit from RIDEM. On 5 January 2018, in response to the NIE, RIDEM received a letter from Natural Resources Services, Inc. on behalf of Respondent. The letter stated that Respondent would comply with the NIE. On 12 June 2018, Respondent applied to RIDEM for a permit. RIDEM reviewed the application and determined that the nature and extent of the proposed alterations to freshwater wetlands required submission of a different type of application. On 6 December 2018, Respondent submitted a new application to RIDEM. On 17 July 2020, RIDEM issued a permit to Respondent, which was valid for 1 year. On 6 April 2021 and 26 May 2021, RIDEM inspected the properties and determined that Respondent had not completed the work to restore the wetlands as required by the permit and the NIE. On 8 June 2021, Respondent applied to RIDEM to renew the permit. On 18 June 2021, RIDEM advised Respondent in a letter that RIDEM could not process the application until Respondent resolved the violations. As of the date of the NOV, Respondent has failed to comply with the NIE, and the permit has expired.

C. FACTS

- (1) The properties are located approximately 600 feet west of Whitehead Road and approximately 1,100 feet south of the intersection with Flat River Road (Route 117), at 115 Whitehead Road, Assessor’s Plat 58, Lot 39.1 and at 125 Whitehead Road, Assessor’s Plat 58, Lot 39.2 in Coventry, Rhode Island (“Properties”).
- (2) Respondent owns the Properties. Respondent acquired the Properties on 26 May 2016.

- (3) On 10 July 2017, RIDEM received a complaint alleging that alterations to freshwater wetlands were occurring on the Properties.
- (4) On 28 August 2017, 11 September 2017, and 9 November 2017, RIDEM inspected the Properties. The inspections revealed the following:
 - (a) Clearing, stumping, excavating, and soil disturbance within a Pond and Perimeter Wetland associated with the removal of a portion of a dam and spillway. These activities directly altered approximately 600 square feet of freshwater wetlands and indirectly altered approximately 3 acres of other portions of the freshwater wetlands.
 - (b) At least clearing, filling (with at least stones and mulch), construction of a patio and fire pit and landscaping within Perimeter Wetland. These activities altered approximately 650 square feet of freshwater wetlands.
 - (c) At least filling (with at least rocks, concrete, wood, boulders, soil, and slash) within Swamp and Perimeter Wetland. These activities altered approximately 600 square feet of freshwater wetlands.
- (5) On 9 April 2018 and 1 May 2018, RIDEM inspected the Properties. The inspections revealed that some restoration work was completed to comply with the NIE.
- (6) On 6 December 2018, Respondent applied to RIDEM for a permit to alter freshwater wetlands on the Properties.
- (7) On 17 July 2020, RIDEM issued a permit (application number 18-0323) (“Permit”), and RIDEM approved plans submitted with the application that were prepared by Mount Hope Engineering (“Approved Plans”). The Permit required Respondent to restore the freshwater wetlands for the activities described in subsection C (4) above in accordance with the Approved Plans within 1 year.
- (8) On 6 April 2021, 26 May 2021, and 6 August 2021, RIDEM inspected the Properties and determined that Respondent had not completed all the work to restore the freshwater wetlands as required by the Permit and the NIE. Based on a result of the 6 August 2021 inspection, RIDEM determined that the activities identified in subsections C (4)(a) and C (4)(c) directly altered approximately 700 square feet of freshwater wetlands.

- (9) The activities described in subsection C (4) above were not exempt in accordance with Part 1.6 (currently Part 3.6) of Rhode Island's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (250-RICR-150-15-1) (currently 250-RICR-150-15-3) ("FWW Rules").
- (10) Respondent did not receive a permit from RIDEM to alter the freshwater wetlands on the Properties in the areas described in subsection C (4) above at the time the activities occurred.
- (11) As of the date of the NOV, Respondent has failed to fully comply with the NIE, and the Permit has expired.

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) **FWW Rules**
 - (a) **Part 1.5(A)(1) (currently Part 3.5.5(A))** – prohibiting activities which may alter freshwater wetlands without a permit from RIDEM, unless the activity is exempt in accordance with Part 1.6 (currently Part 3.6).
 - (b) **Part 1.9(D)(2) (currently Part 3.11.4(B))** – requiring an applicant to comply with all conditions of a permit issued by RIDEM.

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** install cofferdams (in the form of sandbags or appropriate metal sheeting material) across the entire opening on both sides of the unauthorized dam breach (excavation). On the upstream side, the cofferdam must be to a height sufficient to restore the surface water levels in the Pond to pre-alteration conditions. The required restoration work area must be de-watered by pumping into Flat River Reservoir (using proper best management practices), so restoration work may commence under "dry" conditions. These water containment/impoundment measures must be regularly inspected and continually maintained in place to sustain normal surface water levels in the Pond until such time that restoration has been entirely completed.

- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) Prior to the initiation of restoration activities within the Swamp and Perimeter Wetland, properly install a continuous uninterrupted line of biodegradable staked haybales, straw wattles, coir logs, or coconut-fiber logs, as necessary, between all altered/disturbed freshwater wetlands and any adjacent undisturbed freshwater wetlands. In addition, prior to initiation of any dam/spillway restoration activities (see above and below), a weighted silt curtain must be installed between all work areas and the adjacent open water zones of the Pond (i.e., on the water side of the cofferdam installation) to prevent the transport of sediments into the Pond. 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 freshwater wetland restoration, 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, as deemed necessary, to protect all freshwater wetlands.**
- (b) Remove all unauthorized fill and other materials, including all components of the previously permitted dam repair project and partially constructed spillway structure, and restore the altered dam and spillway area to its **original, pre-altered condition**. All fill material that is removed must be deposited in an appropriate upland location, outside of all jurisdictional areas (including, but not limited to, freshwater wetlands, buffers, and buffer zones).
- (c) All work on and around the dam and spillway area, or in or immediately adjacent to any Pond features, must be undertaken during an acceptable “low-flow period”.
- (d) Remove all remaining unauthorized fill material (possibly including, but not limited to, stones, rocks, concrete pieces, wood, boulders, soil material, mulch, and slash), including any remaining components of the unauthorized patio and fire pit area, from the affected portions of the Swamp and Perimeter Wetland. All fill material that is removed must be deposited in an appropriate upland location, outside of all jurisdictional areas (including, but not limited to, freshwater wetlands, buffers, and buffer zones).

- (e) Following removal of fill material, plant all disturbed surfaces within the unauthorized altered Perimeter Wetland with shrubs, as follows:

Balled and burlapped, potted, or transplanted shrub species must be planted in an interspersed fashion, 5 feet on center (apart), at least 3 feet tall after planting. Shrub species must include an equal distribution of at least 3 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*
Black chokeberry, *Aronia melanocarpa*
Speckled alder, *Alnus rugosa* (immediately adjacent to the Pond edge only)
Winterberry, *Ilex verticillata* (in proximity to the Pond)
Inkberry (tall gall berry holly), *Ilex glabra*
Witchhazel, *Hamamelis virginiana*

- (f) If any of the restoration plantings fail to survive at least 1 full year from the time they have been planted, the Respondent shall be responsible for replanting and maintaining the same plant species until such time that survival is maintained over 1 full year.
- (g) All disturbed surfaces within the restored Swamp must be seeded with an appropriate wetland seed mixture. All disturbed surfaces within the Perimeter Wetland must be covered with plantable soil/loam (if necessary) and seeded with a wildlife conservation seed mixture. All disturbed surfaces must then be covered with and stabilized with a dense mat of loose straw mulch, which must be free of any contaminants that may result in the spread of invasive plant species.
- (h) Upon stabilization of all disturbed surface areas, all sediments that have accumulated landward of the installed soil erosion/sediment controls must be removed and deposited in a suitable upland area, outside of all jurisdictional areas (including, but not limited to, freshwater wetlands, buffers, and buffer zones). Biodegradable erosion/sediment controls may remain in place on-site.
- (i) The above required restoration work must be completed by 31 **October 2023**.

- (3) All restored freshwater wetlands and other jurisdictional areas must be allowed to revert to a natural wild condition. **Aside from those activities considered exempt under Part 3.6 of the FWW Rules, no future clearing, mowing, cutting, trimming, or other alterations are authorized in any freshwater wetlands on the Properties without first obtaining a valid permit from RIDEM.**

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:

\$12,250

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) (“Penalty Rules”) and must be paid to RIDEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:
 - (a) By certified check, cashier’s check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767.
 - (b) By wire transfer in accordance with instructions provided by RIDEM.
- (3) Penalties assessed against 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 B through F above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b).

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

Administrative Clerk
RIDEM - Administrative Adjudication Division
235 Promenade Street, 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 the *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:

Tricia Quest, 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 Coventry, Rhode Island wherein the Properties are 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) Tricia Quest of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772408 or at tricia.quest@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:

SOSCIA HOLDINGS, LLC
c/o Richard E. Fleury, Resident Agent
33 College Hill Road, Building 20
Warwick, RI 02886

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Freshwater Wetlands
 File Nos.: OCI-FW-17-126 and FWW Permit 18-0323
 Respondent: SOSCIA HOLDINGS, 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) and D (2) – Wetland Alterations to Pond and Perimeter Wetland – Fact C (4)(a)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) – Wetland Alterations to Perimeter Wetland – Fact C (4)(b)	Type I <i>(\$10,000 Max. Penalty) *</i>	Minor	\$1,000	1 violation	\$1,000
D (1) and D (2) – Wetland Alterations to Swamp and Perimeter Wetland – Fact C (4)(c)	Type I <i>(\$5,000 Max. Penalty) *</i>	Moderate	\$1,250	1 violation	\$1,250
SUB-TOTAL					\$12,250

*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 enjoyed economic benefit from the noncompliance alleged in this enforcement action. 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 RULES = \$12,250

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to Pond and Perimeter Wetland – Fact C (4)(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;"><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 Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent altered a Pond and Perimeter Wetland through clearing, stumping, excavating, and soil disturbance associated with the removal of a portion of a dam and spillway. 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 Pond and Perimeter Wetland were in a substantially undisturbed condition. The Perimeter Wetland contained forest or shrub habitat. The original dam was in place and the original spillway structure stable. (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 5½ years. RIDEM became aware of the alterations on 28 August 2017 when RIDEM first inspected the Properties. (6) Areal extent of the violation: Approximately 700 square feet of freshwater wetlands directly altered and approximately 3 acres of freshwater wetlands indirectly altered. 		
(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 28 August 2017, RIDEM’s inspector spoke with Doug Soscia (“Soscia”) by telephone. Soscia stated that he owned the Properties and that he was aware of two previous permits issued to the prior owner of the Properties to alter freshwater wetlands; however, Respondent did not apply to RIDEM for a permit prior to removing the dam and spillway. As of the date of the NOV, Respondent has failed to mitigate the noncompliance, despite RIDEM’s issuance of the NIE that required Respondent to do so and RIDEM’s issuance of the Permit authorizing the work to be done.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands, including the Pond and Perimeter Wetland, were present on the Properties and had knowledge of the FWW Rules. The actions of Respondent were knowing and willful when the wetland violations took place.
- (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 \$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 Perimeter Wetland – Fact C (4)(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		
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 Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent altered a Perimeter Wetland through at least clearing, filling (with at least stones and mulch), construction of a patio and fire pit and landscaping. The severity of the alterations to the wetland environment was determined to be of importance to the regulatory program. (2) Environmental conditions: Prior to the unauthorized alterations, the Perimeter Wetland was partially cleared prior to Respondent’s purchase of the Properties. (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 – approximately 5½ years. RIDEM became aware of the alterations on 28 August 2017 when RIDEM first inspected the Properties. (6) Areal extent of the violation: Approximately 650 square feet of freshwater wetlands. 		
(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 28 August 2017, RIDEM’s inspector spoke with Doug Soscia (“Soscia”) by telephone. Soscia stated that he owned the Properties and that he was aware of two previous permits issued to the prior owner of the Properties to alter freshwater wetlands; however, Respondent did not apply to RIDEM for a permit prior to clearing the freshwater wetlands, constructing the patio and fire pit and landscaping. Respondent took some actions to mitigate the noncompliance – the patio and fire pit were removed, and the freshwater wetlands have begun to naturally revegetate. As of the date of the NOV, Respondent has failed to fully mitigate the noncompliance by installing required plantings, despite RIDEM’s issuance of the NIE that required Respondent to do so and RIDEM’s issuance of the Permit authorizing the work to be done.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands, including the Perimeter Wetland, were present on the Properties and had knowledge of the FWW Rules. The actions of Respondent were knowing and willful when the wetland violations took place.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> </u> 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	\$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 \$1,000	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to Swamp and Perimeter Wetland – Fact C (4)(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;">___ 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		
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 Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent altered a Swamp and Perimeter Wetland through at least filling (with at least rocks, concrete, wood, boulders, soil, and slash). The severity of the alterations to the wetland environment was determined to be of importance to the regulatory program. (2) Environmental conditions: Prior to the unauthorized alterations, the Swamp and Perimeter Wetland were in a substantially undisturbed condition and contained forest or shrub habitat. (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 5½ years. RIDEM became aware of the alterations on 28 August 2017 when RIDEM first inspected the Properties. (6) Areal extent of the violation: Approximately 700 square feet of freshwater wetlands. <p style="text-align: right; margin-top: 20px;">(continued)</p>		

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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 28 August 2017, RIDEM’s inspector spoke with Doug Soscia (“Soscia”) by telephone. Soscia stated that he owned the Properties and that he was aware of two previous permits issued to the prior owner of the Properties to alter freshwater wetlands. Respondent was aware that freshwater wetlands were present on the Properties; however, Respondent made no effort to determine whether freshwater wetlands were present prior to undertaking the filling. Respondent took reasonable and appropriate steps to mitigate the noncompliance – the fill was removed, and the freshwater wetlands replanted, and the freshwater wetlands have begun to naturally revegetate.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Properties and had knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** RIDEM’s inspection of the Properties on 6 August 2021 revealed that Respondent installed lighting throughout the freshwater wetlands, despite the issuance of the Permit, which required that all lighting be removed from the freshwater wetlands.

MAJOR	<u>X</u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500 \$1,250	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250