

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

IN RE: Christopher Cavedon

FILE NO.: OCI-FW-21-13

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 22 March 2021, RIDEM issued a Notice of Intent to Enforce (“NIE”) to Respondent by certified mail for the violations that are the subject of this Notice of Violation (“NOV”). The NIE advised Respondent of the specific actions required to correct the violations. On 16 April 2021, RIDEM received separate letters from Respondent’s attorney and consultant in response to the NIE. The letters provided information about the condition of the property prior to Respondent’s purchase, work undertaken by Respondent and proposed actions to satisfy the NIE. On 11 May 2021, RIDEM met with Respondent, his attorney and consultant to discuss the NIE. RIDEM agreed to allow Respondent to apply to RIDEM for an after the fact permit. On 29 March 2022, RIDEM issued Respondent a permit, which was revised on 29 August 2022. On 21 November 2022, RIDEM issued a Letter of Nonconformance (“LNC”) to Respondent. The LNC advised Respondent that he had failed to comply with the permit and of the specific actions required to correct the nonconformance. As of the date of the NOV, RIDEM has not received a response to the LNC and upon information and belief, Respondent has not complied with the permit.

C. FACTS

- (1) The properties are located approximately 250 feet west of Camp Dixie Road, generally west/southwest of house number 545 Camp Dixie Road, approximately 1.2 miles south of the intersection of Camp Dixie Road and Eagle Peak Road, Assessor’s Plat 245, Lot 5 (“Lot 5”) and Assessor’s Plat 245, Lot 6 (“Lot 6”), in Burrillville, Rhode Island (“Properties”).
- (2) Respondent owns Lot 5. Respondent acquired Lot 5 on 10 June 2020.
- (3) Joseph E. Fidrych and Susan M. Fidrych own Lot 6 (“Adjacent Owners”).

- (4) On 11 January 2021, RIDEM received a complaint regarding pushing sand into a lake at the Properties.
- (5) On 14 January 2021, RIDEM received a complaint regarding clearing, filling, and constructing a wall at the Properties.
- (6) On 21 January 2021, RIDEM inspected the Properties. The inspection revealed the following:
 - (a) Filling (in the form of at least sand and soil material) and creating disturbance within Pascoag Reservoir (“Pond”). Specifically, machinery was operated in the Pond, sand was spread within the Pond, and rocks were moved from the Pond and added to a terraced retaining wall under construction on Lot 5 and Lot 6 (“Wall”). A portion of the Wall on Lot 5 extended into the Pond. These activities resulted in the unauthorized alteration of approximately 2,000 square feet of the Pond.
 - (b) Clearing, stumping, filling (in the form of at least sand, soil material and rocks), grading, constructing the Wall, and creating disturbance within Perimeter Wetland (“PW”) on Lot 5 and Lot 6. These activities resulted in the unauthorized alteration of approximately 8,000 square feet of the PW.

RIDEM’s inspector spoke with workers who were actively constructing the Wall at the time of the inspection. RIDEM’s inspector was informed that they were working on behalf of Respondent and Adjacent Owners.

- (7) On 4 February 2021 and 25 February 2021, RIDEM’s inspector spoke with Respondent and Respondent’s attorney, respectively, by telephone. During these conversations, RIDEM determined that Respondent was responsible for the activities described in section C (6) above.
- (8) On 29 March 2022, RIDEM issued an after the fact Insignificant Alteration Permit (“Permit”) to Respondent to alter freshwater wetlands on Lot 5. The Permit included approved plans showing the work to be undertaken, including significant restoration of freshwater wetlands (“Approved Plans”).
- (9) On 29 August 2022, RIDEM issued a revised Permit (“Revised Permit”) to Respondent in response to a request submitted by Respondent to RIDEM to modify the Permit. The Revised Permit required that all work, including restoration of freshwater wetlands, be completed by 1 October 2022.

- (10) Condition 5 of the Revised Permit required that the permit be recorded in the land evidence records of the Town of Burrillville within 10 days and a copy of the recorded permit be provided to RIDEM.
- (11) On 10 November 2022, RIDEM inspected the Properties and met with Respondent's consultant at the time of the inspection. The inspection revealed the following:
 - (a) Many areas within the PW on Lot 5 were not planted with trees and shrubs as specified in the Revised Permit.
 - (b) Crushed stone, mulch, lights, and a sprinkler system were installed within the PW on Lot 5 in nonconformance with the Revised Permit that affected approximately 3,900 square feet of the PW.
 - (c) The PW on Lot 6 (portions of which may be on Lot 5) was not restored as specified in the NIE. Also, new fill (in the form of at least gravel and black fabric) was present.

RIDEM's inspector informed Respondent's consultant of the issues described above. Respondent's consultant stated that he would inform Respondent.

- (12) The activities described in section C (6) and subsections C (11)(b) and C (11)(c) above were not exempt in accordance with Part 3.6 (formerly Part 1.6) of Rhode Island's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-3)* (formerly 250-RICR-150-15-1) ("FWW Rules").
- (13) Respondent did not receive a permit from RIDEM for the activities described in section C (6) and subsections C (11)(b) and C (11)(c) above prior to the activities being undertaken.
- (14) As of the date of the NOV, Respondent has failed to restore the PW on Lot 5 in accordance with the Revised Permit.
- (15) As of the date of the NOV, Respondent has failed to restore the PW on Lot 6 in accordance with the NIE.
- (16) As of the date of the NOV, Respondent has failed to record the Revised Permit in the land evidence records of the Town of Burrillville, Rhode Island.

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, Part 3.5.5(A) (formerly Part 1.5(A)(1))** – prohibiting activities which may alter freshwater wetlands without a permit from RIDEM.
- (3) **FWW Rules, Part 3.11.4(B)** – requiring an applicant or subsequent transferee 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** cease from any further alterations to freshwater wetlands on the Properties that are not authorized in accordance with the Revised Permit.
- (2) **Within 10 days of receipt of the NOV**, record the Revised Permit in the land evidence records of the Town of Burrillville, Rhode Island and provide a copy of the recorded permit to RIDEM.
- (3) **By 31 October 2023**, restore all freshwater wetlands on Lot 5 in accordance with the Revised Permit.
- (4) Restore all freshwater wetlands to address the violations identified in subsection C (11)(c) in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) If not already completed, **IMMEDIATELY** install (in a proper manner) appropriate soil erosion/sediment controls (“SES controls”) (e.g., staked biodegradable filter socks/fiber logs, erosion control blankets/jute mesh, staked haybales, and/or silt fence), throughout the Properties where necessary, including along the limits of the unauthorized alterations, between all disturbed surfaces and the adjacent undisturbed wetland areas. Steeply sloping areas or denuded/disturbed areas to be left exposed for long periods of time must be covered with coconut fiber matting, jute mesh, or other acceptable (biodegradable) erosion control matting material. The SES controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) prior to, during, and following the completion of the required wetland restoration, and until such time that all surrounding areas are properly stabilized. At the discretion and direction of

RIDEM, additional SES controls must be installed, as deemed necessary, to protect all freshwater wetlands.

- (b) Remove all unauthorized fill material (including, but not limited to, soil material and crushed stone) from the affected portions of the PW. All removed fill material must be deposited in an appropriate upland location, outside of all RIDEM jurisdictional freshwater wetland areas. Prior to proceeding to the next restoration step, all areas of concern where fill has been removed must first be inspected by RIDEM to confirm that the correct restoration grades have been achieved.
- (c) Plant all applicable surface areas within the unauthorized altered portions of the PW with trees and shrubs, **as directed by RIDEM**, as follows:

- (i) Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 8 feet on center, 5 to 6 feet tall after planting, throughout the areas defined above. Tree species must include an equal distribution of at least 3 of the following selections:

- White pine, *Pinus strobus*
- Eastern hemlock (disease-resistant strain), *Tsuga canadensis*
- Northern white cedar, *Thuja occidentalis*
- White spruce, *Picea glauca*
- White oak, *Quercus alba*
- Northern red oak, *Quercus rubra*
- Black birch, *Betula lenta*
- American beech, *Fagus grandifolia*

- (ii) Balled and burlapped, potted, 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*
- Inkberry, *Ilex glabra*
- Highbush blueberry, *Vaccinium corymbosum*
- Lowbush blueberry, *Vaccinium angustifolium*

Sweet pepperbush, *Clethra alnifolia*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

- (iii) In addition, following restoration of the applicable portions of the PW on the Properties, balled and burlapped or transplanted evergreen screening trees must be planted in a straight line, 8 feet on-center, 5 feet tall after planting, along the outermost (landward) edge of the PW (i.e., at the limit of final restoration). Screening tree species must include an equal distribution of at least 2 of the following selections:

White pine, *Pinus strobus*
Eastern hemlock (disease-resistant strain), *Tsuga canadensis*
Northern white cedar, *Tsuga occidentalis*
White spruce, *Picea glauca*.

- (d) If not present following the above restoration activities, all affected PW areas must be covered with a minimum 4 inches of plantable soil and then seeded with a proper wildlife conservation grass seed mixture. A thick mat of loose straw mulch, which is free of any contaminants that may contain invasive plant seed material, must then be applied to all disturbed surfaces to prevent soil erosion and control possible sedimentation processes from occurring. Hydro-seed, containing the proper seed components and mixed with a proper tackifier (stabilizing mulch material), may be utilized in lieu of the above stabilization measures. Steeply sloping areas or denuded/disturbed areas to be left exposed for long periods of time must be covered with coconut fiber matting, jute mesh, or other acceptable (biodegradable) erosion control matting material.
- (e) All wetland restoration work described above must be completed by **31 October 2023**.
- (f) If any of the required plantings fail to survive at least 1 full year from the time they have been planted, replant and maintain the same plant species until such time that survival is maintained over 1 full year
- (g) Upon stabilization of all disturbed areas, all non-biodegradable soil erosion/sedimentation 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.

- (h) All restored wetland 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 wetland, buffer zone, buffer, or jurisdictional area 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:

\$10,000

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Rules") and must be paid to RIDEM within 30 days of your receipt of the NOV.
- (3) 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.
- (4) 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 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:

Jenna Giguere, Esquire
RIDEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before RIDEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).

- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to Town of Burrillville, Rhode Island to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 2-1-24, as amended.
- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Jenna Giguere of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772306 or at jenna.giguere@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 extension 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:

Christopher Cavedon
545 Camp Dixie Road
Pascoag, RI 02859

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Freshwater Wetlands
 File No.: OCI-FW-21-13
 Respondent: Christopher Cavedon

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 – Fact C (6)(a) | Type I <i>(\$10,000 Max. Penalty) *</i> | Moderate | \$2,500 | 1 violation | \$2,500 |
| D (1) and D (2) Wetland Alterations to Perimeter Wetland – Fact C (6)(b) | Type I <i>(\$10,000 Max. Penalty) *</i> | Major | \$5,000 | 1 violation | \$5,000 |
| D (3) Failure to Comply with Revised Permit – Fact C (11)(a) and (b) | Type I <i>(\$10,000 Max. Penalty) *</i> | Moderate | \$2,500 | 1 violation | \$2,500 |
| SUB-TOTAL | | | | | \$10,000 |

*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 enjoyed an identifiable benefit from the noncompliance alleged in this enforcement action; however, the amount of economic benefit cannot be quantified.

ADMINISTRATIVE PENALTY SUMMARY (continued)

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 = \$10,000

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to Pond – Fact C (6)(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 freshwater wetlands by filling (in the form of at least sand and soil material) and creating disturbance within Pond on Lot 5 and Lot 6. Specifically, machinery was operated in the pond, sand was spread within the pond, and rocks were moved from the pond and added to a terraced retaining wall under construction on Lot 5 and Lot 6. (2) Environmental conditions: Prior to the alterations, the Pond bottom in this area consisted of settled sand and some rocks. The natural portions of shoreline (farthest south) appeared vegetated and slightly undercut on aerial photographs. There was a dock present in the Pond in this area. This area of the Pond has numerous houses, and many of the lots have lawn and cleared areas adjacent 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: Full duration unknown – at least approximately 2 years based on a review of September 2020 aerial photographs which show none of the alterations described above. (6) Areal extent of the violation: Approximately 2,000 square feet. | | |
| (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 by obtaining a permit from RIDEM prior to performing activity within the Pond. Respondent mitigated the noncompliance by installing SES controls and ceasing all activities within the Pond.
- (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:** RIDEM issued a Notice of Intent to Enforce to Respondent on 20 November 2006 ("2006 NIE") for freshwater wetland violations on a separate property Respondent owned on a pond in North Smithfield, Rhode Island. The notice advised Respondent that he cleared, graded, and created soil disturbance within perimeter wetland and required that the freshwater wetlands be restored. Respondent sent photographs to RIDEM on 3 November 2008 of the restoration undertaken. Respondent sold the property in 2012. RIDEM reviewed recent aerial photographs, which show that the freshwater wetlands have returned to a natural wild condition.
- (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. Respondent knew (or should have known based on the 2006 NIE) that a permit from RIDEM was required to alter the Pond but proceeded with the work without obtaining a permit from RIDEM.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

| | | |
|--------------|------------------------------|--------------|
| MAJOR | <u> X </u> MODERATE | MINOR |
|--------------|------------------------------|--------------|

| 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 \$2,500 | \$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 (6)(b)
 VIOLATION NOs.: D (1) and D (2)

| TYPE | | |
|--|---|--|
| <u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare, or environment. | <u> </u> TYPE II INDIRECTLY related to protecting health, safety, welfare, or environment. | <u> </u> TYPE III INCIDENTAL to protecting health, safety, welfare, or environment. |
| 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 freshwater wetlands by clearing, stumping, filling (in the form of at least sand, soil material and rocks), grading, constructing the Wall, and creating disturbance within PW on Lot 5 and Lot 6. (2) Environmental conditions: Prior to the alterations, there was a terraced railroad-tie retaining wall as well as inset stairs, a dock and wooden stairs leading down to the dock within PW in this area. The PW was vegetated with many mature pines (except for the bottom 2-3 terraces and the stairs). All the mature pines have been cleared. The Wall extends beyond the limits of the prior wall. An access road that leads to the Pond is also present, which is an extension of the driveway on the Adjacent Owners' property. Prior to the construction of the access road, the PW was naturally vegetated, and no wall or structures were present in this area. This area of the Pond has numerous houses, and many of the lots have lawn and cleared areas within PW. (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 2 years from 21 January 2021 (date of RIDEM's first inspection) to present. A review of aerial photographs taken in September 2020 did not show any of the alterations. (6) Areal extent of the violation: Approximately 8,000 square feet. | | |
| (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 by obtaining a permit from RIDEM prior to performing activity within PW. Respondent has yet to mitigate the noncompliance, despite receiving the Revised Permit from RIDEM requiring that he do so by 1 October 2022.
- (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:** RIDEM issued a Notice of Intent to Enforce to Respondent on 20 November 2006 ("2006 NIE") for freshwater wetland violations on a separate property Respondent owned on a pond in North Smithfield, Rhode Island. The notice advised Respondent that he cleared, graded, and created soil disturbance within perimeter wetland and required that the freshwater wetlands be restored. Respondent sent photographs to RIDEM on 3 November 2008 of the restoration undertaken. Respondent sold the property in 2012. RIDEM reviewed recent aerial photographs, which show that the freshwater wetlands have returned to a natural wild condition.
- (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. Respondent knew (or should have known based on the 2006 NIE) that a permit from RIDEM was required to alter the PW but proceeded with the work without obtaining a permit from RIDEM.
- (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 |
|------------------|----------|-------|

| 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: Failure to Comply with Revised Permit – Fact C (11)(a) and (b)
 VIOLATION NO.: D (3)

| TYPE | | |
|--|--|---|
| <u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment. | <u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment. | <u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment. |

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Many areas within the PW on Lot 5 were not planted with trees and shrubs as specified in the Revised Permit. Crushed stone, mulch, lights, and a sprinkler system were installed within the PW on Lot 5 in nonconformance with the Revised Permit.
- (2) **Environmental conditions:** Considered, but not utilized for this calculation.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (5) **Duration of the violation:** Full duration unknown – at least approximately 5 months from 10 November 2022 (date of RIDEM’s last inspection) to present.
- (6) **Areal extent of the violation:** The crushed stone, mulch, lights, and sprinkler system affected approximately 3,900 square feet of the PW.

(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 by complying with the Revised Permit, which did not authorize the installation of crushed stone, mulch, lights, and sprinkler system within PW. Upon information and belief, Respondent has yet to mitigate the noncompliance, despite RIDEM’s inspectors advising Respondent’s consultant during the 10 November 2022 inspection of the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** RIDEM issued a Notice of Intent to Enforce to Respondent on 20 November 2006 (“2006 NIE”) for freshwater wetland violations on a separate property Respondent owned on a pond in North Smithfield, Rhode Island. The notice advised Respondent that he cleared, graded, and created soil disturbance within perimeter wetland and required that the freshwater wetlands be restored. Respondent sent photographs to RIDEM on 3 November 2008 of the restoration undertaken. Respondent sold the property in 2012. RIDEM reviewed recent aerial photographs, which show that the freshwater wetlands have returned to a natural wild condition.
- (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. Respondent knew that the Revised Permit from RIDEM did not authorize the installation of crushed stone, mulch, lights, and sprinkler system within the PW.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

| | | |
|--------------|---------------------------|--------------|
| MAJOR | <u> </u> MODERATE | MINOR |
|--------------|---------------------------|--------------|

| 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 \$2,500 | \$1,000 to \$2,500 | \$500 to \$1,000 |
| | MINOR | \$1,000 to \$2,500 | \$500 to \$1,000 | \$100 to \$500 |