

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: John Mahoney

**FILE NO.: OCI-WP-20-119,
STW18-033 and RIR101715**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

On July 22, 2020, DEM issued an Expedited Citation Notice (“ECN”) to Respondent by certified mail for some of the violations that are the subject of this Notice of Violation (“NOV”). The ECN required Respondent to correct the violations and included a \$3,000 administrative penalty. The ECN was returned to DEM as undelivered. On August 18, 2020, DEM sent the ECN to Respondent by electronic mail. On September 16, 2020, DEM spoke with Respondent by telephone. Respondent stated that he is not beginning construction, but rather is building his construction entrance to bring heavy equipment in to remove trees. Respondent stated that he understood he needed to install soil erosion and sediment controls (“SESCs”) as soon as possible. On or about October 18, 2020, the ECN expired. Respondent failed to comply with the ECN. On February 17, 2021, DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent by certified mail and by electronic mail for additional violations that are the subject of the NOV. The NIE required Respondent to correct the violations. On March 2, 2021, DEM received a letter from Respondent’s attorney in response to the NIE. The letter stated that Respondent would comply with the NIE. Respondent took some actions to comply with the NIE, including submission of a revised plan to address the violations; however, Respondent failed to fully comply with the NIE. On April 19, 2021, DEM advised Respondent by electronic mail that he had failed to fully comply with the NIE. On April 22, 2021 and April 29, 2021, DEM spoke with Respondent by telephone and requested reports and documents required in the NIE. On April 30, 2021, DEM again advised Respondent by electronic mail that he had failed to fully comply with the NIE. On May 2, 2021, Respondent forwarded DEM’s electronic mail to his consultant and requested that the consultant contact DEM to address the issues. On May 3, 2021, Respondent submitted the required documents to DEM by electronic mail and thereafter the consultant began providing weekly inspection reports to DEM. On June 17, 2021, DEM sent electronic mail to the consultant regarding his most recent inspection performed on May 30, 2021. DEM requested information on whether the inspection included evaluating the effectiveness of the SESC’s at the southern end of the property. DEM did not receive a response. On June 30, 2021, DEM advised Respondent by electronic mail that DEM’s review of the

reports showed that correction of issues identified during the inspections was not being done. As of the date of the NOV, the most recent reports submitted to DEM by the consultant identified no issues on the property.

C. Facts

- (1) The property is located at Chopmist Hill Road, Plat 45, Lots 107 and 108 in Scituate, Rhode Island (the "Property").
- (2) The Property was previously identified as Plat 45, Lots 17A and 17B.
- (3) McIntosh Hill Estates, LLC owns the Property.
- (4) On September 24, 2013, DEM issued *General Permit for Stormwater Discharge Associated with Construction Activity* (the "2013 Construction General Permit" or "2013 CGP").
- (5) On July 25, 2016, DEM issued a letter to Respondent in response to an application for a Preliminary Determination regarding the presence of freshwater wetlands on the Property. The letter stated that a Riverbank Wetland associated with an off-site stream is potentially present to the south that may extend onto the Property. The letter further stated that Respondent should investigate this for inclusion on any future site plans submitted to DEM.
- (6) On June 27, 2018, DEM issued a permit (No. RIR101715) to Respondent for coverage under the 2013 CGP to construct 6 condominium buildings and associated infrastructure at the Property (the "Permit").
- (7) The Permit requires Respondent to, among other things:
 - (a) notify DEM of the anticipated date that construction at the Property is to begin and prior to any site disturbance.
 - (b) install soil erosion and sediment controls ("SESCs") in accordance with a document titled *Soil Erosion and Sediment Control Plan For: "Chopmist Hill Estates" Chopmist Hill Road Route 102 North Scituate, RI AP 45, Lot 17A & 17B* (the "SESC Plan") and approved plan titled *Site Development Plan for Chopmist Hill Estates, Assessor's Plat 45 Lots 17A & 17B, Chopmist Hill Road in North Scituate, Rhode Island* prepared by Principe Company, Inc. with the latest revision date of June 26, 2018 (the "Approved Site Plans").
 - (c) regularly conduct SESC inspections, maintain and repair all SESC's as necessary to remain in effective operating condition and to prevent harm to adjacent freshwater wetlands.
 - (d) keep a signed and updated copy of the SESC Plan onsite at all times.
 - (e) maintain all SESC inspection and maintenance records onsite and immediately available to DEM upon request.
 - (f) effectively control erosion, runoff, and sedimentation throughout the entire site to maintain compliance with the SESC Plan.

- (g) manage the changing site conditions during each construction phase to prevent pollutants from leaving the site.
 - (h) allow DEM to perform inspections of the equipment, practices and operations regulated or required under the Permit at reasonable times.
- (8) Respondent signed the SESC Plan and certified that it is his responsibility to implement and amend the SESC Plan as appropriate in accordance with the Permit.
 - (9) The SESC Plan states that even if practices are correctly installed according to the plan, the Property is only in compliance when erosion, runoff, and sedimentation are effectively controlled throughout the entire property.
 - (10) The Approved Site Plans did not identify any freshwater wetlands on the Property.
 - (11) The Approved Site Plans require that SESCOs in the form of straw wattles be installed along the limits of disturbance prior to site disturbance on the Property.
 - (12) On September 25, 2018, the 2013 CGP expired.
 - (13) On September 26, 2018, DEM issued *General Permit for Stormwater Discharge Associated with Construction Activity* (the “2018 CGP”).
 - (14) Part I.D.3(b) of the 2018 CGP states that permittees previously authorized under the 2013 CGP will be authorized upon the effect date of the permit.
 - (15) On July 8, 2020, DEM inspected the Property. The inspection revealed that:
 - (a) approximately one quarter to one half an acre of land was cleared and at least one potable water well was installed.
 - (b) no SESCOs were installed on the Property as required by the Permit.
 - (c) DEM was not notified of the date construction began as required by the Permit
 - (16) On September 25, 2020, the 2018 CGP expired.
 - (17) On September 25, 2020, DEM issued *General Permit for Stormwater Discharge Associated with Construction Activity* (the “2020 CGP”), which is effective until September 25, 2025.
 - (18) Part I.D.3.b of the 2020 CGP states that permittees previously authorized under the 2018 CGP will be authorized upon the effect date of the permit.
 - (19) On November 30, 2020, DEM inspected the Property. The inspection revealed that:
 - (a) approximately 90% of the land was cleared of vegetation leaving only bare exposed soil and some remaining tree stumps.
 - (b) non-vegetative SESCOs (in the form of erosion control blankets) were not installed to stabilize the exposed soils by November 15th as required by the SESC Plan and Approved Site Plans.

- (c) sediment barriers were not installed along the slopes to maintain sheet flow and minimize erosion as required by the SESC Plan.
 - (d) no sediment controls traps or sediment basins were installed as required by the SESC Plan.
 - (e) approximately 107 linear feet of SESCOs (in the form of straw wattles) were not installed along the full length of the approved limits of disturbance and around the material stockpile as required by the SESC Plan and as shown on the Approved Site Plans.
 - (f) No copy of the SESC Plan was onsite as required by the Permit.
 - (g) No SESC inspection/maintenance records were onsite as required by the Permit.
- (20) On January 14, 2021, DEM inspected the Property and determined that:
- (a) a defined stream channel (the “Stream”) is present south of the Property that includes a Riverbank Wetland that extends approximately 75 feet onto the Property (the “Riverbank Wetland”).
 - (b) clearing, stumping, and filling/grading of soil materials occurred within the Riverbank Wetland resulting in approximately 8,700 square feet of alteration to the Riverbank Wetland.
- (21) On January 16, 2021, Joe Casali Engineering, Inc., acting as the Town of Scituate Engineer (the “Town Engineer”), inspected the Property with DEM following a 1.35-inch rain event. The inspection revealed that SESCOs located at the downgradient (southern) portion of the Property were inadequate and ineffective resulting in the discharge of pollutants (in the form of sediment) to the Stream as evidenced by observation and photographs showing highly turbid sediment laden stormwater flowing beyond the SESCOs and into the Stream.
- (22) On January 16, 2021, the Providence Water Supply Board (“PWSB”) inspected the Property, took photographs, and sampled the stormwater that discharges from the Property. The photographs show highly turbid stormwater discharging beyond the SESCOs located along the southern limits of the Property. The samples were laboratory analyzed for Turbidity and Total Suspended Solids. The results for Turbidity and Total Suspended Solids were 252 Nephelometric Turbidity Units and 276.3 Milligrams per Liter, respectively, which are consistent with highly turbid sediment laden stormwater.
- (23) On February 5, 2021 DEM inspected the Property with inspectors from the U.S. Environmental Protection Agency. The inspection revealed that no SESC inspection/maintenance records were onsite as required by the Permit.
- (24) On March 26, 2021, Respondent submitted an amended SESC Plan, revised site plans, and a proposed project schedule to DEM. The submittal proposed the following activities:
- (a) installation of additional straw wattles along a modified/proposed limit of disturbance on the Property.

- (b) installation of 16 rip-rap check dams along the existing drainage channel.
 - (c) removal of 2 existing sediment traps and installation of 2 new sediment traps with increased capacity and outlet protection.
 - (d) installation of approximately 900 linear feet of compost filter socks.
 - (e) removal of tree debris and accumulated sediment from the Riverbank Wetland located at the southern portion of the Property followed by the application of wood chips.
- (25) On April 1, 2021, DEM approved the amended SESC Plan, revised site plans, and the proposed project schedule (collectively, the “Temporary SESC Plan”). As part of the approval of the Temporary SESC Plan, DEM required that hydroseed be applied across the Property in all areas of bare soil that were not under active construction. The application of the hydroseed was required to be completed by April 8, 2021. The installation of 16 rip-rap check dams along the existing drainage channel was required to be completed by April 8, 2021. The removal of 2 existing sediment traps and installation of 2 new sediment traps was required to be completed by April 8, 2021. The removal of tree debris and accumulated sediment from the Riverbank Wetland was required to be completed by April 15, 2021. The installation of approximately 900 linear feet of compost filter socks and the wood chip application was required to be completed by April 22, 2021.
- (26) On April 16, 2021, DEM inspected the Property. The inspection revealed the following:
- (a) hydroseed was not applied over all exposed soils that were not under immediate active construction, and no sediment controls were in place around soil stockpiles as required by the Temporary SESC Plan.
 - (b) construction of the easternmost proposed sediment trap was not completed as required by the Temporary SESC Plan.
 - (c) temporary restoration of the Riverbank Wetland by removal of tree debris and accumulated sediment, and removal of the existing sediment trap, was not completed as required by the approved Temporary SESC Plan.
- (27) On June 14, 2021, DEM received electronic mail from Respondent’s consultant, Joseph P. McCue (“McCue”) that included reports of inspections performed by McCue on May 30, 2021 and June 4, 2021 of the SESC’s at the Property. The reports stated that Respondent was notified of the need to repair an area of washout of mulch on the eastern side of the Property.
- (28) On June 30, 2021, DEM received electronic mail from McCue that included reports of inspections performed by McCue on June 15, 2021 and June 20, 2021 of the SESC’s at the Property. The reports stated the following:
- (a) June 15 report – Respondent was notified of the need to repair the area of washout of mulch on the eastern side of the Property and intended to perform the work when the area was drier.

- (b) June 15 report – slightly turbid water was observed discharging from the Property and Respondent was notified to install a haybale checkdam at the discharge point.
 - (c) June 20 report – Respondent was in the process of adding mulch to the eastern side of the Property and installing the haybale check dam at the discharge point.
- (29) On July 9, 2021 DEM inspected the Property following a 2.54-inch rain event. The inspection revealed that soil erosion, runoff, and sedimentation were not being effectively controlled as evidenced by observation and photographs showing highly turbid sediment laden stormwater flowing beyond the SESC's and into the Stream and downstream to a point approximately 1000 feet behind property located at 1586 Chopmist Hill Road.
- (30) On July 12, 2021, DEM received electronic mail from McCue that included reports of inspections performed by McCue on June 30, 2021, July 2, 2021, and July 6, 2021 of the SESC's at the Property. The reports stated the following:
- (a) June 30 report – corrective measures were added including installation of boulders at the southeast portion of the Property to capture and slow velocities of stormwater runoff.
 - (b) June 30, July 2, and July 6 reports – no water was discharged at the time of the inspections.
 - (c) June 30, July 2, and July 6 reports – detention basins were under capacity and were handling all rain events and stormwater runoff.
 - (d) July 2 report – 1 inch of rain was received over 2 days prior to the inspection.
 - (e) July 6 report – 1.03 inches of rain was received on July 3 and July 4.
- (31) On August 18, 2021, DEM attempted to inspect the Property in response to a complaint received of alteration to wetlands. Respondent refused to allow DEM to inspect the Property. DEM's inspector informed Respondent that the Permit allows DEM to inspect the Property. Respondent again refused to allow DEM to inspect the Property and requested that DEM's inspectors leave the Property. DEM's inspectors left the Property without completing the inspection.
- (32) On August 21, 2021, DEM received electronic mail from McCue that included reports of inspections performed by McCue on July 9, 2021, July 15, 2021, July 21, 2021, August 3, 2021, August 7, 2021, and August 13, 2021 of the SESC's at the Property. The reports stated the following:
- (a) July 9 report – turbid water was being discharged off the Property from the southern pond, and Respondent was contacted to discuss corrective actions, specifically, placement of additional mulch and boulders.
 - (b) July 15, July 21, and August 3 reports – no water was being discharged off the Property, and the corrective actions described in the July 9 report were not completed.

- (c) August 7 report – no water was being discharged off the Property, the SESC's easily contained the rains received on August 4-5 and the corrective actions were scheduled to begin on August 9.
- (d) August 13 report – no water was being discharged off the Property and had not since July 21, and the corrective actions were being installed.

The electronic mail also acknowledged the presence of Riverbank Wetland on the Property. McCue stated that that a portion of the Riverbank Wetland was inadvertently cleared and in the coming weeks it will be replanted.

- (33) On September 1, 2021, DEM received electronic mail from McCue that included reports of inspections performed by McCue on August 20, 2021, August 23, 2021, August 24, 2021, and August 31, 2021 of the SESC's at the Property. The reports stated the following:
 - (a) August 20 report – no water was being discharged off the Property and had not since July 21, and the corrective actions were installed.
 - (b) August 23, August 24, and August 31 reports – no water was being discharged off the Property and had not since July 21 and no corrective actions were required.
- (34) On September 13, 2021, DEM received electronic mail from McCue that included reports of inspections performed by McCue on September 2, 2021 and September 10, 2021 of the SESC's at the Property. The reports stated the following:
 - (a) September 2 report – a low volume of clear water with no turbidity was being discharged off the Property slowly, and no corrective actions were required.
 - (b) September 10 report – no water was being discharged off the Property and no corrective actions were required.
- (35) On September 21, 2021 and September 26, 2021, DEM received electronic mail from McCue that included reports of inspections performed by McCue on September 16, 2021 and September 24, 2021 of the SESC's at the Property. The reports stated that no water was being discharged off the Property and no corrective actions were required.
- (36) The Stream is a tributary of the Scituate Reservoir.
- (37) The Scituate Reservoir is a class AA water of the State pursuant to Part 1.25(J)(4) of Rhode Island's *Water Quality Regulations* [effective August 19, 2018 to Current] (the "Water Quality Regulations").
- (38) The Stream is a class AA water of the State pursuant to Part 1.9(E)(2) of the Water Quality Regulations.
- (39) Pursuant to Part 1.9(B)(1) of the Water Quality Regulations, the designated uses of Class AA waters include fish and wildlife habitat and excellent aesthetic value.

- (40) The discharges of highly turbid sediment laden stormwater from the Property that occurred on January 16, 2021 and July 9, 2021 adversely impacted the designated uses of the Stream for fish and wildlife habitat and for aesthetic value.
- (41) Respondent does not have authorization to discharge pollutants from the Property in concentrations that adversely affect the designated uses of the Stream for fish and wildlife habitat and for aesthetic value.
- (42) Respondent failed to comply with the Permit as described in subsections C (19), C (21), C (22), C (23), C (26), C (29), C (31) and C (32) above.
- (43) The activity described in subsection C (20) above is not exempt in accordance with Rhode Island's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* [effective July 16, 2014 to Current] (the "Wetland Regulations").
- (44) Respondent did not receive a permit from DEM to alter the Riverbank Wetland in the area described in subsection C (20) above.
- (45) As of the date of the NOV, based upon the reports submitted to DEM as described in subsections C (33) through C (35), DEM believes that the Property is currently in compliance with the Permit.

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 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) **R.I. Gen. Laws Section 2-1-21** – prohibiting activities which may alter freshwater wetlands without a permit from DEM.
- (3) **Wetland Regulations, Part 1.5(A)(1)** – prohibiting activities which may alter freshwater wetlands without a permit from DEM, unless the activities are exempt in accordance with Part 1.6.
- (4) **Water Quality Regulations**
 - (a) **Part 1.10(B)(2)(c)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that produce odor or change the color of the receiving water to such a degree as to interfere with its designated uses.
 - (b) **Part 1.11(A)** — prohibiting the discharge of pollutants into any waters of the State or performing any activities alone or in combination which DEM determines will likely result in the violation of any State water quality criterion or interfere with one or more of the existing or designated uses

assigned to the receiving waters or to downstream waters. In addition, Best Management Practices, as determined by DEM, shall be used to control erosion, sedimentation, and runoff.

- (c) **Part 1.13(B)** – prohibiting the discharge of pollutants into the waters of the State except as in compliance with the provisions of R.I. Gen. Laws Chapter 46-12, or other applicable chapters, of the Rhode Island General Laws or these regulations, and pursuant to the terms and conditions of an approval issued by DEM thereunder.
 - (d) **Part 1.18** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (5) ***Regulations for the Rhode Island Pollutant Discharge Elimination System [effective October 7, 2018 to Current] (the “RIPDES Regulations”)***
- (a) **Part 1.14B(1)** – requiring the permittee to comply with all conditions of the permit.
 - (b) **Part 1.14(E)** – requiring the permittee to take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.
 - (c) **Part 1.14(F)** – requiring the permittee to at all times maintain in good working order and operate as efficiently as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit.

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) **CEASE AND DESIST** from any further alteration of freshwater wetlands.
- (2) **At all times** inspect, maintain, and repair as necessary all SESC's at the Property in full compliance with the Permit and Temporary SESC Plan for the duration of the construction project and in a manner that prevents turbid sediment laden stormwater from discharging from the Property to the Stream.
- (3) **At all times**, perform the required SESC inspections at the Property as outlined in the Permit, SESC Plan, and Approved Site Plans, and maintain records of all inspections, modifications, and repairs of the SESC's.
- (4) Restore the Riverbank Wetland in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) Prior to the commencement of restoration, install a continuous uninterrupted line of appropriate biodegradable soil erosion/sediment (E/S) controls (e.g., staked haybales, straw wattles, coconut fiber logs) between those portions of the wetlands that have been altered without authorization and any adjacent undisturbed freshwater wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the completion of the required wetland restoration, and until such time that all the surrounding areas are properly stabilized. At the discretion and direction of DEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect all freshwater wetlands.
- (b) Remove any unauthorized fill material (including, but not limited to, soil material) from the Riverbank Wetland. Fill material must be removed down to the original pre-alteration surface grade, covered with plantable soil (4 inch minimum), and seeded with a proper wildlife conservation seed mixture. A thick mat of spread straw mulch, which is free of any contaminants that could promote the spread of invasive plant species, must also be applied over all the disturbed surfaces within the restored portions of the Riverbank Wetland to provide immediate stabilization. All fill material that is removed must be deposited in an appropriate upland location, outside of all wetlands.
- (c) Plant all surface areas within the unauthorized altered/disturbed Riverbank Wetland with trees and shrubs, as follows:
 - (i) Balled and burlapped or transplanted tree species in an interspersed fashion, 10 feet on center, at least 5 feet tall after planting, throughout the areas described above. Tree species must include an equal distribution of at least 3 of the following selections:

Red maple, *Acer rubrum*
Black gum, *Nyssa sylvatica*
Box elder (Ash-leaf maple), *Acer negundo*
Northern red oak, *Quercus rubra*
White oak, *Quercus alba*
American mountain ash, *Sorbus americana*
White ash, *Fraxinus americana*
Black cherry, *Prunus serotina*
Black birch, *Betula lenta*
American beech, *Fagus grandifolia*
Sassafras, *Sassafras albidum*

- (ii) Balled and burlapped, potted, or transplanted shrub species in an interspersed fashion, 5 feet on center, at least 3 feet tall after planting, throughout the areas described above. Shrub species must include an equal distribution of at least 4 of the following selections:

Mountain laurel, *Kalmia latifolia*
Gray (stiff, red panicle) dogwood, *Cornus foemina racemose*
Southern arrowwood, *Viburnum dentatum*
Wild raisin, *Viburnum cassinoides*
Mapleleaf viburnum, *Viburnum acerifolium*
Winterberry, *Ilex verticillate*
Inkberry, *Ilex glabra*
Highbush blueberry, *Vaccinium corymbosum*
Spicebush, *Lindera benzoin*
American cranberrybush, *Viburnum trilobum*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

- (iii) Balled and burlapped or transplanted evergreen screening tree species in a straight line, 8 feet on center, at least 6 feet tall after planting, along the entire outer edge of the above-described planting area (i.e., along the outer/landward limit of the Riverbank Wetland). The tree species to be utilized for this screening line must include at least 2 of the following selections:

Northern white cedar, *Thuja occidentalis*
White pine, *Pinus strobus*
Pitch Pine, *Pinus rigida*
Eastern hemlock (disease-resistant variety), *Tsuga canadensis*
Red cedar, *Juniperus virginiana*

- (d) 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.
- (e) Install permanent DEM buffer zone markers at the outer edge of the Riverbank Wetland. The permanent buffer zone markers must be placed at property boundaries, at all angle points, and at 20-foot intervals (minimum) along the above-described freshwater wetland limits. Acceptable permanent-type markers include 4 inches by 4 inches pressure treated timber posts, galvanized fence posts with cap, or granite or concrete bounds. Markers must extend a minimum of 24-inches above grade. A permanent-type tag or sign labeled "RIDEM Buffer Zone" must be placed on each marker. A permanent-type fence at least 24-inches tall placed along the LOD may be substituted where desired.

- (f) Stabilize all disturbed surfaces within the restored freshwater wetlands, as well as within the immediate surrounding upland areas that might contribute surface runoff to the Stream or Riverbank Wetland with plantable soil (if necessary), a proper seed mixture, and a mat of loose straw mulch.
 - (g) Complete all restoration work by May 30, 2022.
- (5) All restored freshwater wetlands, including replanted areas, must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, filling, grading, or other alterations or improvements are authorized within any freshwater wetlands on the Property without first obtaining a permit from DEM.

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:

\$42,866

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* [effective March 19, 2021 to Current] (the "Penalty Regulations") and must be paid to DEM 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, DEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767.

- (b) By wire transfer in accordance with instructions provided by DEM.
- (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.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if DEM determines that reasonable efforts have been made to comply promptly with the NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b).
 - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, Room 350
Providence, RI 02908-5767.
 - (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b).
 - (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* [effective November 27, 2014 to Current].
- (2) A copy of each request for hearing must also be forwarded to:

Susan Forcier, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

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

- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the Town of 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 Sections 2-1-24 and 46-12-9(c), as amended.
- (7) The NOV does not preclude DEM 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) Susan Forcier of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Patrick J. Hogan of the DEM's Office of Compliance and Inspection at (401) 222-1360 extension 2777119 or at patrick.hogan@dem.ri.gov.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR:

By: _____
David E. Chopy, Administrator
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to DEM's Division of Law Enforcement for
service to Respondent by HAND DELIVERY.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File Nos.: OCI-WP-20-119, STW18-033 and RIR101715
 Respondent: John Mahoney

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), D(4)(c), D(4)(d), and D(5)(a) – Failure to notify DEM at the start of construction	Type III <i>(\$6,250 Max. Penalty) *</i>	Minor	\$500	1 violation	\$500
D(1), D(4)(c), D(4)(d), D(5)(a) and D(5)(b) – Failure to install SESC's in accordance with the Permit (July 8, 2020, November 30, 2020, and April 16, 2021)	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	3 violations	\$7,500
D(1), D(4)(c), D(4)(d) & D(5)(a) – Failure to maintain SESC Plan onsite in accordance with the Permit (November 30, 2020)	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$2,500	1 violation	\$2,500
D(1), D(4)(c), D(4)(d) and D(5)(a) – Failure to maintain SESC inspection/maintenance records onsite in accordance with the Permit (November 30, 2020 and February 5, 2021)	Type III <i>(\$6,250 Max. Penalty) *</i>	Minor	\$500	2 violations	\$1,000

ADMINISTRATIVE PENALTY SUMMARY (continued)

D(1), D(4), and D(5) – Failure to comply with the Permit resulting in adverse impacts to the Stream (January 16, 2021 and July 9, 2021)	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	2 violations	\$25,000
D(1), D(4)(c), D(4)(d) & D(5)(a) – Failure to allow access to inspect in accordance with the Permit (August 18, 2021)	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
D(2) and D(3) – Alteration Of Riverbank Wetland Without A Permit	Type I <i>(\$5,000 Max. Penalty) *</i>	Major	\$5,000	1 violation	\$5,000
<i>SUB-TOTAL</i>					\$42,750

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NONCOMPLIANCE			
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE, OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED. 			
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>		<i>AMOUNT</i>
<p>Delayed costs associated with installation of SESCOs in accordance with the Permit on July 8, 2020. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts, and values used in this analysis are listed in this table. The unit cost is based on the RI Dept. of Transportation Weighted Average Unit Bid Prices for the calendar year 2020.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C-Corp</p> <p>\$4,412</p> <p>July 2020 November 30, 2020 December 31, 2021</p> <p>6.7%</p>	<p>\$52</p>
<p>Avoided costs associated with installation of SESCOs in accordance with the Permit. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts, and values used in this analysis are listed in this table. The unit cost is based on the RI Dept. of Transportation Weighted Average Unit Bid Prices for the calendar year 2021.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C-Corp</p> <p>\$121</p> <p>July 2020 December 31, 2021 December 31, 2021</p> <p>6.7%</p>	<p>\$94</p>
SUB-TOTAL			\$116

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 DEM has not incurred any additional or extraordinary costs during the investigation, enforcement, and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$42,866

PENALTY MATRIX WORKSHEET

CITATION: Failure to notify DEM at the start of construction

VIOLATION NOs.: D(1), D(4)(c), D(4)(d) and D(5)(a)

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

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

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to notify DEM at the start of construction as required by the Permit. Notification to DEM that construction has begun allows DEM to initiate compliance inspections. Compliance inspections during active construction are important to the regulatory program as it allows DEM to address any violations observed in real time which can prevent water pollution. Preventing water pollution is the primary goal of the regulatory program.
- (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:** 1 day.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. Respondent failed to notify DEM that construction had begun. The violation cannot be mitigated.
- (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:** Negligence is attributable to Respondent for failure to comply. Respondent has full control over the Property and the occurrence of the violation.
- (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> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250 \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to install SESC's in accordance with the Permit (July 8, 2020, November 30, 2020, and April 16, 2021)

VIOLATION NOs.: D(1), D(4)(c), D(4)(d), D(5)(a) and D(5)(b)

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 PARTICULAR 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 failed to fully install SESC's in accordance with the Permit. Installation of SESC's to prevent water pollution is important to the regulatory program. Preventing water pollution is the primary goal of the regulatory program. (2) Environmental conditions: The Property is an active residential condominium construction site with approximately 4.2 acres of land disturbance located in the watershed of the Scituate Reservoir. (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 3 days. DEM observed the violations during inspections conducted at the Property on July 8, 2020, November 30, 2020, and April 16, 2021. (6) Areal extent of the violation: Considered, but not utilized for this calculation. <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. The SESC's were not installed in accordance with the Approved Plans and Temporary SESC Plan as required by the Permit. On or about August 20, 2021, Respondent installed the SESC's to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** 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:** Negligence is attributable to Respondent for failure to comply. Respondent has full control over the property and the occurrence of the violation.
- (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> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to maintain SESC Plan onsite in accordance with the Permit (November 30, 2020)

VIOLATION NOs.: D(1), D(4)(c), D(4)(d), and D(5)(a)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">X 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 PARTICULAR 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 failed to keep a copy of the SESC Plan on site and available for DEM review in accordance with the Permit. The SESC Plan is an important document that is used by the Respondent to guide SESC installation, repair, modification, inspection and reporting during the life of the construction project to ensure the effectiveness of the SESC. Maintaining effective SESC in accordance with the SESC Plan to prevent water pollution is important to the regulatory program. Preventing water pollution is the primary goal of the regulatory program. (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: Unknown, at least 1 day. DEM observed the violation during an inspection conducted on November 30, 2020. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
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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. The SESC Plan was not kept on site as required by the Permit. DEM has no knowledge if Respondent has since mitigated the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** 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:** Negligence is attributable to Respondent for failure to comply with the Permit, the Water Quality Regulations, and the RIPDES Regulations. Respondent has full control over the site and the occurrence of the violation.
- (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> X MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to maintain SESC inspection/maintenance records onsite in accordance with the Permit (November 30, 2020 and February 5, 2021)

VIOLATION NOs.: D(1), D(4)(c), D(4)(d) and D(5)(a)

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

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

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to maintain SESC inspection/maintenance records as required by the Permit and DEM has no evidence that the inspections were ever performed. Retention of SESC inspection/maintenance records onsite to be made available to DEM inspection is important to the regulatory program.
- (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. DEM observed the violations during inspections conducted at the Property on November 30, 2020 and February 5, 2021. On June 1, 2021, McCue began submitting SESC inspection/maintenance reports to DEM, beginning with an inspection conducted on May 17, 2021.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. Respondent has since mitigated the non-compliance by engaging McCue to regularly conduct the required SESC inspections and submit the associated inspection reports to DEM. The first SESC report was submitted to DEM on June 1, 2021 which included inspection results for May 17, 2021 and May 27, 2021. Several SESC reports have been submitted to DEM since June 1, 2021.
- (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:** Negligence is attributable to Respondent for failure to comply. Respondent has full control over the property and the occurrence of the violations.
- (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> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250 \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with the Permit resulting in adverse impacts to the Stream
(January 16, 2021 and July 9, 2021)

VIOLATION NOs.: D(1), D(4), and D(5)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	___ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	___ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD <small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to properly install, maintain and/or operate the SESCOs to prevent water pollution as required by the Permit, resulting in the discharge of sediment laden stormwater to the Stream. Compliance with the requirements of the Permit is very important to the regulatory program. Preventing water pollution is the primary goal of the regulatory program. (2) Environmental conditions: The Property is an active residential condominium construction site with approximately 4.2 acres of land disturbance. The Stream is a class AA tributary to the Scituate Reservoir, a designated drinking water supply. The Property is located within the Scituate Reservoir subwatershed area. As a result of the discharge, the Stream was brown and turbid. (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 2 days. DEM observed the violations during inspections conducted at the Property on January 16, 2021 and July 9, 2021. (6) Areal extent of the violation: The brown, turbid water was visible in the Stream approximately 1,000 feet downstream of the Property on July 9, 2021. The extent of the brown, turbid water in the Stream on January 16, 2021 was likely the same as what was observed on July 9, 2021. <p style="text-align: right;">(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. Since construction is a dynamic process with changing site conditions, it is the operator's responsibility to manage the property during each construction phase to prevent pollutants from leaving the property. Respondent did not properly modify or supplement the SESC's during construction as necessary and in a manner that would prevent turbid sediment laden stormwater from leaving the Property and adversely impacting the Stream. Based on several SESC inspection/maintenance reports submitted to DEM by McCue, DEM believes that Respondent has mitigated the non-compliance.
- (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:** Negligence is attributable to Respondent for failure to comply. Respondent has full control over the property and the occurrence of the violation.
- (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 \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000 \$12,500	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to allow access to inspect in accordance with the Permit (August 18, 2021)
 VIOLATION NOs.: D(1), D(4)(c), D(4)(d), and D(5)(a)

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

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

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to allow DEM access to inspect the Property in accordance with the Permit. Access to perform inspections of permitted projects to prevent water pollution is important to the regulatory program. Preventing water pollution is the primary goal of the regulatory program.
- (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:** 1 day – August 18, 2021.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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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. After he initially refused access, DEM's inspector explained that the Permit allows DEM the right to inspect. Respondent again denied access and requested that DEM's inspectors leave the Property.
- (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:** The violation is willful. Respondent has full control over the Property and the occurrence of the violation and was informed by DEM's inspector that DEM has a right to inspect in accordance with the Permit.
- (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>X</u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500 \$1,250	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Alteration Of Riverbank Wetland Without A Permit
 VIOLATION NOs.: D (2) and D (3)

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.

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent altered freshwater wetlands by clearing, stumping, and filling/grading of soil materials within Riverbank Wetland. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.
- (2) **Environmental conditions:** The Riverbank Wetland were undisturbed prior to the alterations. The alterations involved construction of a stormwater basin.
- (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 9 months. DEM first became aware of the alterations on January 14, 2021 during an inspection of the Property.
- (6) **Areal extent of the violation:** Approximately 8,700 square feet.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. Respondent was advised by DEM in a letter on July 25, 2016 that the Riverbank Wetland may extend onto the Property and that Respondent should further investigate this matter for inclusion on any future site plans submitted to DEM. Respondent submitted plans to DEM for the project but did not include the Riverbank Wetland on the plans. Respondent has not taken any steps to mitigate the noncompliance, despite receiving the NIE from DEM requiring restoration of the Riverbank Wetland.
- (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.

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- (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:** Considered, but not utilized for this calculation.
- (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 \$5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000 \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250