

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Alexandria Realty, LLC  
R & P Construction Incorporated**

**FILE Nos.: OCI-WP-22-29  
RIR102228, & STW21-130**

**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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

**B. ADMINISTRATIVE HISTORY**

RIDEM issued a stormwater discharge permit to Alexandria Realty, LLC (“Alexandria”) to construct a residential subdivision at the property that is the subject of this Notice of Violation (“NOV”). On 8 March 2022, RIDEM inspected the property for compliance with the permit; however, a completed inspection was not possible as the equipment operator for R & P Construction Incorporated (“R&P”) refused to speak to or cooperate with RIDEM’s inspector. On 16 March 2022, RIDEM issued an *Expedited Citation Notice* (“ECN”) to Alexandria by electronic mail for violations documented by RIDEM at the property on 8 March 2022. Alexandria did not respond to or comply with the ECN. RIDEM re-inspected the property on 5 October 2022 and documented an additional violation. The violations documented by RIDEM on the property on 8 March 2022 and 5 October 2022 are the subject of the NOV.

**C. FACTS**

- (1) The property is located off Taylor Road, Assessor’s Plat 30, Lot 16 in Johnston, Rhode Island ("Property").
- (2) Alexandria owns the Property.
- (3) On 4 October 2021, RIDEM issued a *General Permit for Stormwater Discharge Associated with Construction Activity* (“Permit”) to Alexandria for construction of a 7-lot subdivision, including 6 single family residences and associated infrastructure at the Property.
- (4) The Permit was issued pursuant to the Rhode Island Pollutant Discharge Elimination System program. The purpose of the Permit is to set forth specific conditions on construction development that are required as RIDEM-approved means to prevent water pollution, in this case including prevention of sediment discharge through any water conveyance into Simmons Reservoir.

- (5) On 8 March 2022, RIDEM inspected the Property and observed R&P constructing the 7-lot subdivision, thus identifying R&P as an “operator” within the definition set forth in Section I(C) of the Permit.
- (6) The Permit requires owners and operators to:
  - (a) notify RIDEM at the start of construction and prior to the commencement of any site alterations as set forth in Section I(E).
  - (b) install soil erosion and sedimentation controls (“SESCs”) in accordance with documents submitted in the Permit application process, including a document titled *Soil Erosion and Sediment Control Plan for: A 6-Lot Conservation Subdivision with a New Private Road Taylor Road Johnston, Rhode Island AP 30, Lot 16* (“SESC Plan”) and engineered plans titled *Preliminary Plan Submission For A Proposed 6-Lot Conservation Development (Major Subdivision) With New Private Road Alexandria Estates Taylor Road Johnston, Rhode Island AP 30, Lot 16* (“Approved Plans”) as set forth in Section III(J)(3)(a).
  - (c) ensure that all erosion, runoff, sediment, and pollution prevention controls remain in effective operating condition and are protected from activities that would reduce their effectiveness, and if a problem is found, the necessary repairs or modifications must be made by close of the next workday as set forth in Section III(J)(3)(c).
- (7) The inspection conducted by RIDEM on 8 March 2022 revealed that Respondents failed to:
  - (a) notify RIDEM at the start of construction.
  - (b) install SESC in accordance with the SESC Plan and the Approved Plans (specifically, SESC in the form of compost filter socks were not installed along the eastern limit of disturbance as evidenced by observation and photographs).
  - (c) maintain and repair all SESC as necessary to remain in effective operating condition (specifically, SESC in the form of silt fencing had been knocked down and damaged along the northern limits of disturbance as evidenced by observation and photographs).
- (8) On 5 October 2022, RIDEM reinspected the Property. The inspection revealed that:
  - (a) SESC were installed along the eastern limit of disturbance after the prior inspection.
  - (b) Not all SESC were maintained and repaired in effective operating condition. Specifically, SESC along the eastern limit of disturbance were overtopped with sediment as evidenced by observation and photographs.

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) **Rhode Island’s *Water Quality Regulations* (250-RICR-150-05-1) (“WQ Rules”)**
  - (a) **Part 1.13(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of an approval issued by RIDEM.
  - (b) **Part 1.18(A)**- mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (3) **Rhode Island’s *Regulations for the Rhode Island Pollutant Discharge Elimination System* (250-RICR-150-10-1) (“RIPDES Rules”)**
  - (a) **Part 1.14(B)(1)** – requiring the permittee to comply with all conditions of a permit issued by RIDEM.
  - (b) **Part 1.14(E)** – requiring the permittee to take all reasonable steps to minimize or prevent a discharge in violation of the permit.
  - (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 **at all times and throughout the life of the project**, inspect, maintain, repair, replace, supplement, or modify any SESC’s as necessary to minimize soil erosion and to achieve compliance with the terms and conditions of the Permit.

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:

**\$8,000**

- (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. Penalty payments shall be by one of two methods:

- (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection  
235 Promenade Street, Suite 220  
Providence, RI 02908-5767.

- (b) By wire transfer in accordance with instructions provided by RIDEM.

- (3) Penalties assessed against Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (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 RIDEM 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 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, 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* (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, 4<sup>TH</sup> 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) 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) Attorney Name of RIDEM's Office of Legal Services at (401) 222-6607 extension 2772306 or at [jenna.giguere@dem.ri.gov](mailto:jenna.giguere@dem.ri.gov). All other inquiries should be directed to Patrick J. Hogan of RIDEM's Office of Compliance and Inspection at (401) 222-1360 extension 2777119 or at [patrick.hogan@dem.ri.gov](mailto: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  
RIDEM Office of Compliance and Inspection

Date: \_\_\_\_\_

CERTIFICATION

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

Alexandria Realty, LLC  
C/o Marc B. Gertsacov  
Resident Agent for Service  
144 Medway Street  
Providence, RI 02906

R & P Construction Incorporated  
C/o Peter J. St. Lawrence, III  
Registered Agent for Service  
43 Starr Street  
Johnston, RI 02919

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: Water Pollution

File Nos.: OCI-WP-22-29, RIR102228, and STW21-130

Respondents: Alexandria Realty, LLC and R & P Construction Incorporated

### 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 (2), and D(3)(a) – Failure to notify RIDEM at Start of Construction	Type III <i>(\$6,250 Max. Penalty) *</i>	Minor	\$500	1 violation	\$500
D (1), D (2), D (3)(a) and D (3)(b) – Failure to install SESCs in accordance with SESC Plan and the Approved Plans	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1 violation	\$2,500
D (1) through D (3) – Failure to maintain SESCs in accordance with the Permit	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	2 violations	\$5,000
SUB-TOTAL					\$8,000

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

### ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE, OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.



## **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 REGULATIONS = \$8,000**

## PENALTY MATRIX WORKSHEET

CITATION: Failure to notify RIDEM at Start of Construction

VIOLATION Nos.: D (1), D (2), & D (3)(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><u>X</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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to notify RIDEM at the start of construction as required by the Permit. Notification to RIDEM that construction has begun allows RIDEM to initiate compliance inspections. Compliance inspections during active construction are important to the regulatory program as it allows RIDEM to address any violations observed in real time which can prevent water pollution. Preventing water pollution is the primary goal of the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> 1 day.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the non-compliance. Respondents failed to notify RIDEM that construction had begun. The noncompliance 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 Respondents for failure to comply. Respondents have 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.

<b>MAJOR</b>	<b>MODERATE</b>	<b><u>  X  </u> MINOR</b>
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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
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250 <b>\$500</b>

## PENALTY MATRIX WORKSHEET

CITATION: Failure to install SESC's in accordance with SESC Plan and the Approved Plans  
 VIOLATION Nos.: D (1), D (2), D (3)(a), & D (3)(b)

TYPE		
<b><u>X</u> TYPE I</b> DIRECTLY related to protecting health, safety, welfare, or environment.	<b><u>      </u> TYPE II</b> INDIRECTLY related to protecting health, safety, welfare, or environment.	<b><u>      </u> TYPE III</b> INCIDENTAL 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.		
<b>FACTORS CONSIDERED:</b> Taken from Part 1.10(A)(1)(b) of the Penalty Rules. <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to fully install SESC's in accordance with the SESC Plan and Approved Plans as required by 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.</li> <li>(2) <b>Environmental conditions:</b> The Property is an active residential construction site with approximately 4.6 acres of land disturbance located in the watershed of Simmons Reservoir.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – at least 1 day. RIDEM observed the violation during an inspection conducted at the Property on 8 March 2022. Additional SESC's had been installed by the time RIDEM re-inspected the Property on 5 October 2022.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the noncompliance. The SESC's were not installed in accordance with the SESC Plan and Approved Plans as required by the Permit. Respondents mitigated the noncompliance by installing additional SESC's.
- (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 Respondents for failure to comply with the Permit. Respondents have 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.

<b>MAJOR</b>	<b>MODERATE</b>	<b><u>  X  </u> MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		<b>TYPE I</b>	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
	<b>MINOR</b>	\$2,500 to \$6,250 <b>\$2,500</b>	\$1,250 to \$2,500	\$250 to \$1,250

## PENALTY MATRIX WORKSHEET

CITATION: Failure to maintain SESC's in accordance with the Permit

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

TYPE		
<p><u>  X  </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u>      </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u>      </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to properly maintain SESC's as required by the Permit. Proper maintenance of SESC's ensures their effectiveness at preventing water pollution. Compliance with the maintenance requirements of the Permit is important to the regulatory program. Preventing water pollution is the primary goal of the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> The Property is an active residential construction site with approximately 4.6 acres of land disturbance located in the watershed of Simmons Reservoir.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration is unknown. At least 2 days. RIDEM documented the violation during an inspection conducted at the Property on 8 March 2022. RIDEM re-inspected the Property on 5 October 2022 and documented the same violation at a different location on the Property.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol> <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:** Respondents did not take reasonable or appropriate steps to prevent the noncompliance. Respondents failed to maintain the SESC's to prevent the noncompliance. It is not known to RIDEM what steps, if any, Respondents took 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 Respondents for the failure to comply with the WQ Rules and RIPDES Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<b><u>  X  </u> MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		<b>TYPE I</b>	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
	<b>MINOR</b>	\$2,500 to \$6,250 <b>\$2,500</b>	\$1,250 to \$2,500	\$250 to \$1,250