

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

**IN RE: North American Catholic Educational
Programming Foundation, Inc.**

FILE NO.: OCI-FW-18-189

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 5 February 2019, RIDEM issued a letter to Respondent advising Respondent of alterations to freshwater wetlands on the property that is the subject of this Notice of Violation (“NOV”) and required Respondent to cease and desist from further alteration of the wetlands (“C&D Letter”). On 20 February 2019, in response to the C&D Letter, RIDEM received a letter from Respondent’s attorney. The letter stated that the property is zoned for farming activities and, as such, the activities described in the C&D Letter are exempt from RIDEM’s regulations. As of the date of the NOV, Respondent has not applied to RIDEM for a permit and has not restored the wetlands.

C. FACTS

- (1) The property is located approximately 190 feet north of Hartford Pike, approximately 620 feet west of the intersection with Regina Drive, Assessor’s Plat 24, Lot 60 in Scituate, Rhode Island (“Property”).
- (2) Respondent owns the Property. Respondent acquired the Property on 25 October 2018.
- (3) On 12 December 2018, 18 January 2019, and 29 January 2019, RIDEM received complaints regarding alterations to wetlands on the Property involving the construction of a road, filling with rocks and dirt, digging a pond, and bringing in truckloads of gravel into a pond.

- (4) On 19 December 2018, 22 February 2019, and 27 July 2021, RIDEM inspected the Property. The inspections revealed the following:
- (a) At least clearing, grubbing, filling (in the form of soil, gravel, rocks, and boulders), soil disturbances and construction of a road within Swamp. These activities altered approximately 8,050 square feet of freshwater wetlands.
 - (b) Filling (in the form of at least boulders, soil, and gravel) and associated disturbances to construct a road within a Stream. These activities altered approximately 100 square feet (18 linear feet) of freshwater wetlands.
 - (c) Clearing, grubbing, stumping, filling (in the form of at least soil, rocks, stumps, and slash) and soil disturbances within Riverbank Wetland (“RBW”) and Perimeter Wetland (“PW”) associated with the southern side of the Stream and Swamp, respectively. These activities altered approximately 16,600 square feet of freshwater wetlands.
 - (d) Clearing, grubbing, stumping, filling (in the form of at least soil, rocks, logs, stumps, and slash) and soil disturbances within RBW and PW associated with the northern side of the Stream and Swamp, respectively. These activities altered approximately 8,300 square feet of freshwater wetlands.
- (5) RIDEM determined that Respondent met the definition of a farmer, as that term is defined in Section 2-1-22(j) of the *Freshwater Wetlands Act* (“FWW Act”), in 2018 based on RIDEM’s review of documents submitted by Respondent for 2014 through 2017. RIDEM has not received any documents from Respondent since 2017, and RIDEM has no knowledge whether Respondent continued to meet the definition of farmer in 2018, 2019, 2020, 2021 or 2022.
- (6) RIDEM determined that the activities described in subsections C (4)(a), C (4)(b) and C (4)(c) were not normal farming activities as that term is defined in Section 2-1-22(i) of the FWW Act and therefore were not exempt from the FWW Act.
- (7) RIDEM is unaware of what farming activities, if any, are being undertaken on the Property and therefore cannot determine if the activities described in subsection C (4)(d) were normal farming activities as that term is defined in Section 2-1-22(i) of the FWW Act and therefore exempt from the FWW Act.
- (8) The activities described in subsection C (4) above were not exempt in accordance with Part 1.6 (currently Part 3.6) of Rhode Island’s *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (250-RICR-150-15-1) (“FWW Rules”).
- (9) Respondent did not receive a permit from RIDEM to alter the freshwater wetlands on the Property in the areas described in subsection C (4) above.

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 1.5(A)(1)(currently Part 3.5.5(A))** – prohibiting activities which may alter freshwater wetlands without a permit from 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 and desist from any further alteration of the above-described freshwater wetlands.
- (2) **Within 30 days of receipt of the NOV**, provide to RIDEM all the required documentation for 2018-2022 to show that Respondent met and continues to meet the definition of a farmer as defined in statute and the FWW Rules.
- (3) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) Prior to the commencement of restoration install a continuous uninterrupted line of staked haybales, straw wattles, silt fence, or other acceptable soil erosion/sediment control devices between all existing disturbed surfaces/areas to be restored and any adjacent undisturbed freshwater wetlands. Prior to any restoration work within the watercourse, appropriate log-and-hay check-dams must be installed within the affected channel immediately downstream of the required restoration work zone. Downstream of the log-and-hay check-dams, haybale check-dams must be installed for an adequate distance and at appropriate intervals to ensure the prevention of any further adverse impacts to downstream wetland resources.
- (b) Remove all unauthorized fill material (including at least soil material, gravel, stones/rocks, boulders, logs, slash, debris, and stumps) from the Swamp, Stream, PWs, and RBWs (north and south of the Swamp/Stream crossing). All fill material that is removed must be deposited in an appropriate upland location, outside of all wetlands. Fill material must be removed down to original grade in all the areas of concern, to match the surface elevations of the surrounding undisturbed wetlands. The Stream must be constructed at the proper grade to allow it to flow freely and feed

into the original (unaltered) channel that is situated downstream of the crossing/alterd channel. All restoration work within the Swamp and Stream must be undertaken during an accepted “low flow” period (generally July 1 - October 31).

- (c) Following the completion of fill removal operations, plant **all** unauthorized cleared/alterd portions of PWs and RBWs (north and south of the Swamp/Stream crossing) with trees and shrubs, at the direction of RIDEM, as follows:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 15 feet on center, 4 to 5 feet tall after planting, throughout the areas defined above. Tree species must include an equal distribution of at least 4 of the following selections:

White pine, *Pinus strobus*
Red maple, *Acer rubrum*
Northern red oak, *Quercus rubra*
White oak, *Quercus alba*
White ash, *Fraxinus americana*
American beech, *Fagus grandifolia*
Sassafras, *Sassafras albidum*
Gray Birch, *Betula populifolia*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion 10 feet on center, at least 3 feet tall after planting, throughout the areas 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*
Arrowwood (southern), *Viburnum dentatum*
American cranberrybush, *Viburnum trilobum*
Mapleleaf viburnum, *Viburnum acerifolium*
Inkberry, *Ilex glabra*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Sweet pepperbush, *Clethra alnifolia*
Bayberry, *Myrica pennsylvanica*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

- (d) In addition, balled and burlapped or transplanted evergreen tree species must be planted in a straight line, 8 feet on center, 5 to 6 feet tall after planting, along the entire outer (landward) edge of the disturbed PWs and RBWs edges (north and south of the Swamp/Stream crossing). 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, *Tsuga canadensis*

Red cedar, *Juniperus virginiana*

- (e) Any of the required plantings failing to survive at least 2 full growing seasons from the time they have been planted, must be replanted (with the same or similar species) and further replaced (as necessary) until such time that survival is maintained over 2 full growing seasons.
- (f) All disturbed surfaces within wetlands and the surrounding areas, resulting from the above restoration activities (or other activities on the site), shall be covered with a suitable plantable soil (as necessary) and properly seeded and stabilized. If not present following the above restoration activities, all affected PW and RBW areas must be covered with a minimum 4 inches of plantable soil and 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 excelsior matting, jute mesh, or other acceptable (biodegradable) erosion control matting material.
- (g) All restored wetland areas, including replanted areas, must be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other disturbances, alterations, or improvements are allowed within the restored wetland areas, or within any other freshwater wetlands on the Property, without first obtaining a valid permit from the RIDEM (unless the activity is exempt in accordance with Part 1.6 (currently Part 3.6) of the FWW Rules).

- (h) Upon stabilization of disturbed/restored surface areas, all artificial erosion and sedimentation controls (e.g., silt fences) must be removed from freshwater wetlands. Staked haybales, spread straw mulch, and other naturally based/bio-degradable erosion control measures may remain in place to decompose naturally. Prior to the removal of the controls and/or prior to the contractor vacating the site, all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.
- (i) All the restoration work outlined above must be completed by:
31 May 2023.

F. PENALTY

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$17,500

- (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:

Christina Hoefsmit, 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 Scituate, 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) Christina Hoefsmit of RIDEM's Office of Legal Services at (401) 222-6607 extension 2772023 or at christina.hoefsmit@dem.ri.gov. All other inquiries should be directed to David 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:

North American Catholic Educational Programming Foundation, Inc.
c/o John R. Primeau, Registered Agent
47 Meadowview Boulevard
North Providence, RI 02904

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Freshwater Wetlands

File No.: OCI-FW-18-189

Respondent: North American Catholic Educational Program Foundation, Inc.

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 – Fact C(4)(a)	Type I (\$10,000 Max. Penalty) *	Major	\$5,000	1 violation	\$5,000
D (1) and D (2) Wetland Alterations – Fact C(4)(b)	Type I (\$10,000 Max. Penalty) *	Moderate	\$2,500	1 violation	\$2,500
D (1) and D (2) Wetland Alterations – Fact C(4)(c)	Type I (\$10,000 Max. Penalty) *	Major	\$5,000	1 violation	\$5,000
D (1) and D (2) Wetland Alterations – Fact C(4)(d)	Type I (\$10,000 Max. Penalty) *	Major	\$5,000	1 violation	\$5,000
SUB-TOTAL					\$17,500

*Maximum Penalties represent the maximum penalty amounts per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE

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

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

A review of the record in this matter has revealed that Respondent has 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 = \$17,500

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations – Fact C (4)(a)

VIOLATION NOs.: D (1) and D (2)

TYPE		
<p><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty 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 at least clearing, grubbing, stumping, filling (in the form of soil, gravel, rocks, boulders), soil disturbances and construction of a road within Swamp. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Property is approximately 6.455 acres. A portion of the Property is covered by forested Swamp, Stream, PWs associated with the Swamp and RBWs associated with the Stream. Prior to the alterations, the areas north of the Swamp and Stream were thickly forested and the areas south of the Swamp and Stream were vegetated with scrub-shrubs/saplings/vines. (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 years. RIDEM first became aware of the alterations on or about 18 December 2019 when RIDEM inspected the Property. (6) Areal extent of the violation: Approximately 8,050 square feet. 		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** On 11 July 2018, RIDEM issued a Notice of Violation ("2018 NOV") to Respondent for alterations to wetlands on an adjacent parcel to the Property. Respondent filed an appeal of the 2018 NOV to RIDEM's Administrative Adjudication Division ("AAD"). On 4 December 2019, AAD's hearing officer issued a Decision and Order dismissing the appeal and upholding the 2018 NOV in its entirety. Respondent filed an appeal of the Decision and Order to Superior Court. On 12 February 2021, the Court modified the Decision and Order and remanded the case to RIDEM to reassess the administrative penalty [case C.A. No P2019-11876]. In the decision, Justice Vogel directed RIDEM to recalculate the administrative penalty without consideration of this factor. As the underlying facts in that case are like this case, this factor was considered, but not utilized for this calculation.
- (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:** RIDEM alleges that Respondent failed to comply with the FWW Rules for the case that is the subject of the 2018 NOV. This factor was considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Property and knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$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: Wetland Alterations – Fact C (4)(b)

VIOLATION NOs.: D (1) and D (2)

TYPE		
<p><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty 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 boulder, soil, gravel) and associated disturbances to construct a road within a Stream. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Property is approximately 6.455 acres. A portion of the Property is covered by forested Swamp, Stream, PWs associated with the Swamp and RBWs associated with the Stream. Prior to the alterations, the areas north of the Swamp and Stream were thickly forested and the areas south of the Swamp and Stream were vegetated with scrub-shrubs/saplings/vines. (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 years. RIDEM first became aware of the alterations on or about 18 December 2019 when RIDEM inspected the Property. (6) Areal extent of the violation: Approximately 100 square feet (18 linear feet). 		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** On 11 July 2018, RIDEM issued a Notice of Violation ("2018 NOV") to Respondent for alterations to wetlands on an adjacent parcel to the Property. Respondent filed an appeal of the 2018 NOV to RIDEM's Administrative Adjudication Division ("AAD"). On 4 December 2019, AAD's hearing officer issued a Decision and Order dismissing the appeal and upholding the 2018 NOV in its entirety. Respondent filed an appeal of the Decision and Order to Superior Court. On 12 February 2021, the Court modified the Decision and Order and remanded the case to RIDEM to reassess the administrative penalty [case C.A. No P2019-11876]. In the decision, Justice Vogel directed RIDEM to recalculate the administrative penalty without consideration of this factor. As the underlying facts in that case are like this case, this factor was considered, but not utilized for this calculation.
- (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:** RIDEM alleges that Respondent failed to comply with the FWW Rules for the case that is the subject of the 2018 NOV. This factor was considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Property and knowledge of the FWW Rules.
- (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
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$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 – Fact C (4)(c)

VIOLATION NOs.: D (1) and D (2)

TYPE		
<p><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty 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, grubbing, stumping, filling (in the form of at least soil, rocks, stumps, and slash) and soil disturbances within RBW and PW associated with the southern side of the Stream and Swamp, respectively. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Property is approximately 6.455 acres. A portion of the Property is covered by forested Swamp, Stream, PWs associated with the Swamp and RBWs associated with the Stream. Prior to the alterations, the areas north of the Swamp and Stream were thickly forested and the areas south of the Swamp and Stream were vegetated with scrub-shrubs/saplings/vines. (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 years. RIDEM first became aware of the alterations on or about 18 December 2019 when RIDEM inspected the Property. (6) Areal extent of the violation: Approximately 16,600 square feet. 		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** On 11 July 2018, RIDEM issued a Notice of Violation ("2018 NOV") to Respondent for alterations to wetlands on an adjacent parcel to the Property. Respondent filed an appeal of the 2018 NOV to RIDEM's Administrative Adjudication Division ("AAD"). On 4 December 2019, AAD's hearing officer issued a Decision and Order dismissing the appeal and upholding the 2018 NOV in its entirety. Respondent filed an appeal of the Decision and Order to Superior Court. On 12 February 2021, the Court modified the Decision and Order and remanded the case to RIDEM to reassess the administrative penalty [case C.A. No P2019-11876]. In the decision, Justice Vogel directed RIDEM to recalculate the administrative penalty without consideration of this factor. As the underlying facts in that case are like this case, this factor was considered, but not utilized for this calculation.
- (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:** RIDEM alleges that Respondent failed to comply with the FWW Rules for the case that is the subject of the 2018 NOV. As the 2018 NOV is under appeal, this factor was considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Property and knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$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: Wetland Alterations – Fact C (4)(d)

VIOLATION NOs.: D (1) and D (2)

TYPE		
<p><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty 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, grubbing, stumping, filling (in the form of at least soil, rocks, logs, stumps, and slash) and soil disturbances within RBW and PW associated with the northern side of the Stream and Swamp, respectively. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Property is approximately 6.455 acres. A portion of the Property is covered by forested Swamp, Stream, PWs associated with the Swamp and RBWs associated with the Stream. Prior to the alterations, the areas north of the Swamp and Stream were thickly forested and the areas south of the Swamp and Stream were vegetated with scrub-shrubs/saplings/vines. (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 years. RIDEM first became aware of the alterations on or about 18 December 2019 when RIDEM inspected the Property. (6) Areal extent of the violation: Approximately 8,300 square feet. 		

(continued)

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** On 11 July 2018, RIDEM issued a Notice of Violation ("2018 NOV") to Respondent for alterations to wetlands on an adjacent parcel to the Property. Respondent filed an appeal of the 2018 NOV to RIDEM's Administrative Adjudication Division ("AAD"). On 4 December 2019, AAD's hearing officer issued a Decision and Order dismissing the appeal and upholding the 2018 NOV in its entirety. Respondent filed an appeal of the Decision and Order to Superior Court. On 12 February 2021, the Court modified the Decision and Order and remanded the case to RIDEM to reassess the administrative penalty [case C.A. No P2019-11876]. In the decision, Justice Vogel directed RIDEM to recalculate the administrative penalty without consideration of this factor. As the underlying facts in that case are like this case, this factor was considered, but not utilized for this calculation.
- (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:** RIDEM alleges that Respondent failed to comply with the FWW Rules for the case that is the subject of the 2018 NOV. As the 2018 NOV is under appeal, this factor was considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Property and knowledge of the FWW Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
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	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500