STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

RE: BMP, LLC **AAD NO. 08-002/FWE**
NOTICE OF VIOLATION 2007 899FW & C07-0076

DECISION & ORDER:

The Department of Environmental Management's Motion for Summary Judgment

FACTS & TRAVEL

The Rhode Island Department of Environmental Management ("RIDEM"), Office of Compliance and Inspection ("OC&I") filed a Motion for Summary Judgment on August 6, 2025. The Respondent, BMP, LLC, did not file an Objection to the Motion.

Request for Admissions ("RFA's") were propounded on the Respondent by the OC&I on April 18, 2025. OC&I's Second Request for Admissions were propounded on the Respondent on July 3, 2025. The Respondent failed to respond to any of the Requests for Admissions.

The OC&I argues that the basis for this Motion for Summary Judgment are the "deemed admissions," which are those facts considered admitted because of the Respndent's failure to timely respond to the RFA's propounded by the OCI. The OC&I states that pursuant to Rule 36 of the Superior Court Rules of Civil Procedure, "the matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter." There is long standing precedent that failure to respond to

requests for admissions can lead to "deemed admissions" that can form the proper basis for a motion for summary judgment. Cardi Corp. v. State, 524 A.2d 1092, 1097 (R.I. 1987)("It is well settled that a party may obtain a summary judgment in reliance on Rule 36 admissions of the party opposing the summary judgment.")[1]; The Travelers Ins. Co. v. Builders Res. Corp., 785 A.2d 568, 570 (R.I. 2001); O'Hara v. John Hancock Mut. Life Ins. Co., 574 A.2d 135, 137 (R.I. 1990); Empire Acquisition Grp., LLC v. Atl. Mortg. Co., 35 A.3d 878, 884 (R.I. 2012).

In its Memorandum of Law in Support of its Motion for Summary Judgment, the OC&I gives a detailed account of how each of the "deemed admissions" prove the violations in the Notice of Violation ("NOV") of February 22, 2008 repeated here as follows:

I. The Deemed Admissions Establish that the Respondent Acquired the Property Subject to the Notice of Violation.

First Admissions (I)(1) defines the subject Properties: "The subject property is located easterly of Route 116 and Mill Street in the vicinity of Hope Mill Complex, Assessor's Plat 5, Lots 1, 107, 114, and 117 in Scituate, Rhode Island and Plat 101, Lot 5 in Coventry, Rhode Island ("Easterly Property") and is located westerly of Route 116

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[1] Cardi Corp. v. State cited the following: *Brook Village North Associates v. General Electric Co.*, 686 F.2d 66, 70 (1st Cir.1982) (courts have not hesitated in appropriate cases to apply the sanction of Rule 36 to material facts that conclusively establish or preclude a party's claim); *Rainbolt v. Johnson*, 669 F.2d 767, 768 (D.C.Cir.1981) ("District Court erred in failing to give binding and conclusive effect to the unanswered requests for admissions"); *United States v. Kenealy*, 646 F.2d 699, 703 (1st Cir.), *cert. denied*, 454 U.S. 941, 102 S.Ct. 478, 70 L.Ed.2d 250 (1981) (court was within its discretion to grant summary judgment against defendants based on matters involuntarily admitted against them).

and northerly of Hope Furnace Road in the vicinity of Hope Mill Pond Dam, Assessor's Plat 5, Lots 58 and 69 in Scituate, Rhode Island ("Westerly Property") (collectively, "Properties")." First Admissions (I)(3) provides that "Respondent took title to the Properties on 30 June 2020."

First Admissions (I)(2) establishes the issuance of the subject Notice of Violation: "On 22 February 2008, RIDEM issued a Notice of Violation to Hope Mill Village Associates, LLC and Vincent R. Coccoli alleging certain violations of Rhode Island's *Freshwater Wetlands Act*, *Water Pollution Act*, *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*, *Rules and Regulations for the Investigation and Remediation of Hazardous Materials Releases*, and the *Water Quality Regulations* at the Properties."

Additionally, First Admission (I)(3) and (I)(4) establish that the Respondent took title to the Properties subject to the NOV. "On 28 February 2008, the NOV was recorded in the land evidence records of Scituate, Rhode Island." First Admissions (I)(3). "The Receiver's Deed specifically refers to "the Buyer's assumption of…claims and liens held by…DEM regarding that certain DEM lien and NOV." First Admissions (I)(4).

R.I. Gen. Laws § 2-1-24 codifies the law that subsequent transferees are responsible for compliance with recorded NOVs pertaining to freshwater wetlands violations: "Any order or notice to restore freshwater wetlands, buffers, floodplains, or other jurisdictional area is eligible for recordation under chapter 13 of title 34 and shall be recorded in the land evidence records in the city or town where the property subject

to the notice is located, and any subsequent transferee of the property is responsible for complying with the requirements of the order or notice."

R.I. Gen. Laws § 46-12-9(c) codifies the law that subsequent transferees are responsible for compliance with recorded NOVs pertaining to water pollution violations: "Any order or notice issued by the director shall be eligible for recordation under chapter 13 of title 34. The director shall forward the original order or notice to the city or town wherein the subject property is located and the order or notice shall be recorded in the land evidence records in the city or town wherein the subject property is located. Any subsequent transferee of that property shall be responsible for complying with the requirements of the order or notice."

II. The Deemed Admissions Establish All Essential Facts Regarding the Wetlands Violations in the NOV.

First Admissions Section (II) establishes that "freshwater wetlands alterations occurred on the Easterly Property without the requisite RIDEM permits" (Frist Admissions (II)(1)) and that "freshwater wetlands alterations occurred on the Westerly Property without the requisite RIDEM permits" (First Admissions (II)(2)). First Admissions (II)(1)(A)-(D) and (II)(2)(A)-(J) detail the specific locations within the altered wetlands, the type of alteration, and the square footage impacted, each corresponding to the relevant paragraphs of the NOV (which NOV paragraphs are referenced in corresponding parentheticals for reference).

First Admissions (II)(1)(A) provides that the following unauthorized wetland disturbances occurred on the Property: "In the 200-foot Riverbank Wetlands located

northeast of the Hope Mill complex between the west side of the Pawtuxet River and the east side of the Mill Tail Race: clearing, stumping, grubbing, grading, and creating soil disturbance, resulting in unauthorized alteration of approximately 228,800 square feet of Freshwater Wetland." This corresponds to NOV Section (B)(5)(a)(excerpted below).

Second Admissions #1 provides: "In the 200-foot Riverbank Wetlands located north of the Hope Mill complex along the westerly side of the Mill Tail Race and easterly of Mill Street: clearing, excavating, stumping, grubbing, grading, and creating soil disturbance, resulting in unauthorized alteration of approximately 42,300 square feet of Freshwater Wetland. This corresponds to NOV Section (B)(5)(b)(excerpted below).

(5) During an inspection of the easterly Property by the DEM on June 27, 2007 a DEM inspector witnessed the following unauthorized alterations of freshwater wetlands by the Respondents:

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(a) Recent and ongoing clearing, stumping, grubbing, grading, and creating soil disturbance within two (2) 200-foot Riverbank Wetlands. These activities resulted in the unauthorized alteration of approximately 228,800 square feet (approximately 5.25 acres) of Freshwater Wetland. This altered wetland area is located northeast of the Hope Mill complex between the west side of the Pawtuxet River and the east side of the Mill Tail Race.

(b) Recent and ongoing clearing, excavating, stumping, grubbing, grading, and creating soil disturbance within another 200-foot Riverbank Wetland. These activities resulted in the unauthorized alteration of approximately 42,300 square feet of Freshwater Wetland. This altered wetland area is located north of the Hope Mill complex along the westerly side of the Mill Tail Race and easterly of Mill Street.

First Admissions (II)(1)(C) provides: "In the 200-foot Riverbank Wetlands located east of the Hope Mill complex along the west side of the Pawtuxet River south of the alterations described in (5)(A) above: clearing, stumping, grubbing, grading, and creating a soil disturbance, resulting in unauthorized alteration of approximately 50,000 square feet of Freshwater Wetland. This corresponds to NOV Section (B)(8)(a)(excerpted below).

First Admissions (II)(1)(D) provides: "In the 200-foot Riverbank Wetlands located on the [west] side of the Mill Tail Race east of Mill Road and north of the wetland alterations described in (5)(B) above: clearing, excavating, stumping, grubbing, grading, and creating soil disturbance, resulting in unauthorized alteration of approximately 16,300 square feet of Freshwater Wetland. This corresponds to NOV Section (B)(8)(b)(excerpted below).

(8) During an inspection of the easterly Property by DEM on July 31, 2007, a DEM inspector witnessed the following additional unauthorized alterations of freshwater wetlands by the Respondents:

(a) Recent and ongoing clearing, stumping, grubbing, grading, and creating soil disturbance at least partially within two (2) 200-foot Riverbank Wetlands of the Pawtuxet River located east of the Hope Mill complex along the west side of the Pawtuxet River and south of the wetland alterations described in Fact (5)(a) in non-compliance with the requirement in the NOIE to stop all activity on the easterly Property which had affected or could affect any and all freshwater wetlands. These activities resulted in the unauthorized alteration of approximately 50,000 square feet (approximately 1.15 acres) of Freshwater Wetland.

(b) Recent and ongoing clearing, excavating, stumping, grubbing, grading, and creating soil disturbance within the 200-foot Riverbank Wetland on the west side of the Mill Tail Race east of Mill Road and north of the wetland alterations described in Fact (5)(b) in non-compliance with the requirement in the NOIE to stop all activity on the easterly Property which had affected or could affect any and all freshwater wetlands. These activities resulted in the unauthorized alteration of approximately 16,300 square feet of Freshwater Wetland.

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First Admissions (II)(2)(A) provides: "In the 200-foot Riverbank Wetlands south and southeast of the Mill Head Race and north / northeast of the Pawtuxet River: clearing, stumping, grubbing, grading, and creating soil disturbance, resulting in unauthorized alteration of approximately 40,000 square feet of Freshwater Wetland." This corresponds to NOV Section (B)(9)(a)(excerpted below).

First Admissions (II)(2)(B) provides: "In the Forested Wetland encompassed within the 200-foot Riverbank Wetlands located southeast of the Hope Mill Dam spillway, south of the Mill Head Race gate structure and east/northeast of the Pawtuxet River: clearing excavating, stumping, grubbing, grading, and creating soil disturbance, resulting in unauthorized alteration of approximately 8,000 square feet of Freshwater Wetland." This corresponds to NOV Section (B)(9)(b)(excerpted below).

Second Admissions #2 provides: "Within the River and Forested Wetland (in the form of vegetated raised landforms / islands) located immediately down river from the Hope Mill Dam spillway, clearing, excavating, grading, diverting flows, and creating a disturbance, resulting in the unauthorized alteration of approximately 2,400 square feet of Freshwater Wetland and elimination of the Forested Wetland habitat. (See NOV Section (B)(9)(c)).

First Admissions (II)(2)(D) provides: "Within the River in the area southeast of the Hope Mill Dam and south of the Mill Head Race gate structure: filling in the form of rocks, stones, and boulders, resulting in unauthorized alteration of approximately 1,200 square feet of Freshwater Wetland." This corresponds to NOV Section (B)(9)(d)(excerpted below).

First Admissions (II)(2)(E) provides: "Within the Riverbank Wetland located between the south/southwesterly edge of the Pawtuxet River and the north easterly edge of the gravel access drive to Hope Mill Dam: clearing, excavating, stumping, grubbing, grading, and creating soil disturbance, resulting in authorized alteration of 2,250 of Freshwater Wetland." This corresponds to NOV Section (B)(9)(e)(excerpted below).

(9) During an inspection of the westerly Property by DEM on August 16, 2007 a DEM inspector witnessed the following unauthorized alterations of freshwater wetlands by the Respondents:

(a) Recent and ongoing clearing, stumping, grubbing, grading, and creating soil disturbance within two (2) 200-foot Riverbank Wetlands. These activities have resulted in the unauthorized alteration of approximately 40,000 square feet of Freshwater Wetland. These activities are located south and southeast of the Mill Head Race and north /northeast of the Pawtuxet River.

(b) Recent and ongoing clearing, excavating, stumping, grubbing, grading, and creating soil disturbance within a Forested Wetland, all of which is encompassed by 200-foot Riverbank Wetland. These activities have resulted in the unauthorized alteration of approximately 8,000 square feet of Freshwater Wetland. This altered wetland area is southeast of the Hope Mill Dam spillway, south of the Mill Head Race gate structure and east/northeast of the Pawtuxet River.

(c) Recent and ongoing clearing, excavating, grading, diverting flows and creating disturbance within a River and Forested Wetland (in the form of vegetated raised landforms or "islands"). These activities have resulted in the unauthorized alteration of approximately 2,400 square feet of Freshwater Wetland and the elimination of the Forested Wetland habitat. The Forested Wetland was located immediately down river from the Hope Mill Dam spillway and was surrounded by flows of the Pawtuxet River.

(d) Recent and ongoing filling (in the form of rocks, stones, and boulders) within a River. These activities have resulted in the unauthorized alteration of approximately 1,200 square feet of Freshwater Wetland. This altered wetland area is located southeast of the Hope Mill Dam and south of the Mill Head Race gate structure.

(e) Recent and ongoing clearing, excavating, stumping, grubbing, grading, and creating soil disturbance within another 200-foot Riverbank Wetland. These activities have resulted in the unauthorized alteration of approximately 2,250 square feet of Freshwater Wetland. These activities took place between the

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south/southwesterly edge of the Pawtuxet River and the north easterly edge of the gravel access drive to the Hope Mill Dam.

First Admissions (II)(2)(F) provides: "In the 200-foot Riverbank Wetland along the base of Hope Mill Dam: clearing and grubbing in excess of the then-applicable regulatory exemption for dam maintenance, resulting in the authorized alteration of approximately 1,200 square feet of Freshwater Wetland. This corresponds to NOV Section (B)(10)(a)(excerpted below).

> (10) During an inspection of the westerly Property by DEM on August 17, 2007 a DEM inspector witnessed the following additional unauthorized alteration of freshwater wetlands by the Respondents:
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> (a) Recent and ongoing clearing and grubbing along the base of Hope Mill Dam in the 200-foot Riverbank Wetland in excess of the exemption allowed in the DEM *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* for maintenance of a dam. These activities resulted in the unauthorized alteration of approximately 1,200 square feet of Freshwater Wetland.

First Admissions (II)(2)(G) provides: "Along the earthen embankment of the Hope Mill Dam, within the Forested Wetland below the Hope Mill Dam, and within the 200-foot Riverbank Wetland associated with the Pawtuxet River: clearing, grading, and filling with soil material and stones. This corresponds to NOV Section (B)(12)(a)(excerpted below).

> (12) During an inspection of the westerly Property by DEM on September 7, 2007 a DEM inspector witnessed the following additional unauthorized alteration of freshwater wetlands by the Respondents:
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> (a) Recent and ongoing clearing, grading, and filling (in the form of soil material and stones) along the earthen embankment of the Hope Mill Dam, within a Forested Wetland below the Dam, and within the 200-foot Riverbank Wetland associated with the Pawtuxet River.

First Admissions (II)(2)(H) provides: "Within the River in the area southeast of the Hope Mill Dam and south of the Mill Head Race gate structure: filling in the form of rocks, stones, and boulders, resulting in alteration of approximately 1,800 square feet

of Freshwater Wetland." This corresponds to NOV Section (B)(13)(a)(excerpted below).

First Admissions (II)(2)(I) provides: "In the 200-foot Riverbank Wetland along the base of Hope Mill Dam, along the earthen embankment of the Hope Mill Dam, within the Forested Wetland below the Hope Mill Dam, and within the 200-foot Riverbank Wetland associated with the Pawtuxet River: clearing, excavating, stumping, grubbing, grading, and creating soil disturbance, resulting in unauthorized alteration of approximately 8,300 square feet of Freshwater Wetland." This corresponds to NOV Section (B)(13)(b)(excerpted below).

Second Admissions #3 provides: "Within the Forested Wetland encompassed by a 200-foot Riverbank Wetland southeast of the earthen embankment of the Hope Mill Dam and west/southwest of the westerly end of the spillway to the Hope Mill Dam: clearing, excavating, stumping, grubbing, grading, and creating soil disturbance, resulting in authorized alteration of approximately 3,750 square feet of Freshwater Wetland." This corresponds to NOV Section (B)(13)(c)(excerpted below).

Second Admissions #4 provides: "Within the Pawtuxet River and a Forested Wetland (in the form of vegetated raised landforms or "islands") that existed in an area surrounded by river and immediately below the westerly end of the spillway to Hope Mill Dam: clearing, excavating, grading, diverting flows and generally creating disturbance, resulting in unauthorized alteration of approximately 3,000 square feet of Freshwater Wetland and the elimination of the Forested Wetland habitat." (See NOV Section (B)(13)(d)).

(13) During an inspection of the westerly Property by DEM on September 11, 2007 a DEM inspector witnessed the following additional unauthorized alterations of freshwater wetlands by the Respondents:

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(a) Additional filling (in the form of rocks, stones, and boulders) within the Pawtuxet River in the area described in Instance 9(d) in violation of the C&D issued on August 16, 2007. These activities have resulted in the unauthorized alteration of approximately 1,800 square feet of Freshwater Wetland.

(b) Additional clearing, excavating, stumping, grubbing, grading, and creating soil disturbance within another portion of the 200-foot Riverbank Wetland described in Instance 10(a) and 12(a) in violation of the C&D issued on August 16, 2007 and September 7, 2007. These activities have resulted in the unauthorized alteration of approximately 8,300 square feet of Freshwater Wetland.

(c) Additional clearing, excavating, stumping, grubbing, grading, and creating soil disturbance within a Forested Wetland, all of which is encompassed by 200-foot Riverbank Wetland, in violation of the C&D issued on August 16, 2007 and September 7, 2007. These activities have resulted in the unauthorized alteration of approximately 3,750 square feet of Freshwater Wetland. The altered wetland area is located southeast of the earthen embankment of the Hope Mill Dam and west/southwest of the westerly end of the spillway to the Hope Mill Dam.

(d) Additional clearing, excavating, grading, diverting flows and generally creating disturbance within the Pawtuxet River and a Forested Wetland (in the form of vegetated raised landforms or "islands") that existed in an area surrounded by river and immediately below the westerly end of the spillway to the Hope Mill Dam. These activities have resulted in the unauthorized alteration of approximately 3,000 square feet of Freshwater Wetland and the elimination of the Forested Wetland habitat.

The above-discussed admissions establish that freshwater wetlands were altered without the requisite RIDEM permits. This is a clear violation of R.I. Gen. Laws § 2-1-21, which provides that "no person, firm, industry, company, corporation, city, town, municipal or state agency, fire district, club, nonprofit agency, or other individual or group may" "excavate; drain; fill; place trash, garbage, sewage, highway runoff,

drainage ditch effluents, earth, rock, borrow, gravel, sand, clay, peat, or other materials or effluents upon; divert water flows into or out of; dike; dam; divert; change; add to or take from or otherwise alter the character of any freshwater wetland, buffer, or floodplain as defined in § 2-1-20 without first obtaining the approval of the director of the department of environmental management."

This strict prohibition of unauthorized freshwater wetland alterations is likewise codified in RIDEM's regulations. Section 3.5.5(A) of the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (250-RICR-150-15-3) provides: "Except as provided in § 3.6 of this Part, no person may excavate; drain; fill; place trash, garbage, sewage, road runoff, drainage ditch effluents, earth, rock, borrow, gravel, sand, clay, peat, or other materials or effluents upon; divert water flows into or out of; dike; dam; divert; clear; grade; construct in; add to or take from or otherwise alter the character of any freshwater wetland, buffer, floodplain, area subject to flooding or area subject to storm flowage in any way, without first obtaining the approval from the Department..." Regarding the § 3.6 exceptions to the requirement of Departmental approval for freshwater wetland alterations, none apply in this case. See Second Admissions #6 ("None of the freshwater wetland alterations alleged in the NOV were exempted from the RIDEM permitting requirements").

III. The Deemed Admissions Establish All Essential Facts Regarding the Water Pollution Violations in the NOV.

First Admissions (III)(1) provides: "Stormwater containing soils was discharged from both the Easterly Property and the Westerly Property to the Pawtuxet River

(hereinafter the "discharges") without the requisite RIDEM permits." First Admissions (III)(2) provides: "The discharges were turbid and resulted in turbidity in the Pawtuxet River." These admissions correspond to NOV Section (B)(22) and (23)(excerpted below).

> (22) During an inspection of the easterly Property by DEM on September 11, 2007 during an ongoing rain storm a DEM inspector witnessed that storm water containing soil was being discharged to the Mill Tail Race that flows to the Pawtuxet River in a concentration that violated applicable the water quality standards and caused alterations of freshwater wetlands as evidenced by:
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> (a) visual observations and photographs taken by the DEM inspector of turbid water in the tailrace;
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> (b) visual observations and photographs taken by the DEM inspector of turbid water discharging from the easterly Property and entering the tailrace; and
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> (c) visual observations and photographs taken by the DEM inspector showing no erosion/sedimentation controls installed along the tailrace.
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> (23) During an inspection of the westerly Property by DEM on September 11, 2007 during an ongoing rain storm a DEM inspector witnessed that storm water containing soil was being discharged to the Pawtuxet River in a concentration that violated the applicable water quality standards and caused alterations of freshwater wetlands as evidenced by:
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> (a) visual observations and photographs taken by the DEM inspector of turbid water in the River;
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> (b) visual observations and photographs taken by the DEM inspector of turbid water discharging from the westerly Property and entering the River; and
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> (c) visual observations and photographs taken by the DEM inspector showing no erosion/sedimentation controls installed along the River.

The above-discussed admissions establish that discharges were made to the waters of the state without the requisite RIDEM permits. This is a clear violation of R.I. Gen. Laws § 46-12-5, which provides as follows:

> (a) It shall be unlawful for any person to place any pollutant in a location where it is likely to enter the waters or to place or cause to be placed any solid waste materials, junk, or debris of any kind whatsoever, organic or non organic, in any waters.
> (b) It shall be unlawful for any person to discharge any pollutant into the waters except as in compliance with the provisions of this chapter and any rules and regulations promulgated hereunder and pursuant to the terms and conditions of a permit.
> (c) It shall be unlawful to construct or install any industrial, commercial, or other establishment, to make any modification or addition thereto, or to undertake any development which may result in the discharge of any pollutant into the waters of the state, unless the discharge is made to a system or means to prevent pollution approved by the director.

This strict prohibition of unauthorized discharges to state waters is likewise codified in RIDEM's regulations. Section 1.11(A) of the Water Quality Regulations (250-RICR-150-05-1) provides: "Activities Shall Not Violate Water Quality Standards - No person shall discharge pollutants into any waters of the State or perform any activities alone or in combination which the Director 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 accordance with §§ 1.9, 1.10, and 1.20 of this Part." Section 1.13(B) provides: "No person shall discharge 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."

Pursuant to R.I. Gen. Laws § 46-12-1(15), "pollutant" means "any material or effluent which may alter the chemical, physical, biological, or radiological characteristics and/or integrity of water." The discharge at issue was stormwater containing soils, which meets the statutory definition as material that altered the water by making it turbid. See Second Admissions #6 ("Discharge of stormwater containing soils is a 'pollutant' within the meaning of R.I. Gen. Laws § 46-12-1(15)").

IV. Relief Requested; Supporting Affidavit

Pursuant to Section 1.12(C) of the Rules and Regulations for Assessment of Administrative Penalties, 250-RICR-130-00-1: "Once a violation is established, the violator bears the burden of proving by a preponderance of the evidence that the Director failed to assess the penalty and/or the economic benefit portion of the penalty in accordance with these Regulations." In this case, the admissions address the penalty assessment. First Admissions (V)(1) provides: "The total administrative penalty of $85,000 was properly assessed pursuant to RIDEM's *Rules and Regulations for Assessment of Administrative Penalties*."

The OC&I's Motion also seeks an order upholding the Restoration Requirements to cure the freshwater wetland violations. First Admissions (IV)(1) provides: "The Restoration Requirements defined in Section (D)(2) of the NOV provide the appropriate remedy for restoring the Freshwater Wetlands at issue."[2]

In further support of its Motion, OCI also submits the supporting Affidavit of Christina Hoefsmit, Acting Administrator of OCI. Exhibit 3 (with Attachment A). The Affidavit authenticates the NOV as a governmental record and avers that the Penalty

[2] The remainder of the Order concerning site remediation does not require an order as those provisions have been complied with.

Matrices supporting the penalty assessment are regularly calculated in accordance with the *Rules and Regulations for Assessment of Administrative Penalties*.

SUMMARY JUDGMENT STANDARD OF REVIEW

Pursuant to Rule 1.8(A)(1) , the AAD follows the R.I. Superior Court Rules of Civil Procedure. Rule 56 governs motions for summary judgment which states that "the judgment sought shall be rendered forthwith if the pleadings…and admissions on file…show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Also, "a motion for summary judgment is a harsh remedy and must be applied cautiously." Mallette v. Children's Friend & Serv., 661 A.2d 67, 69 (R.I. 1995). A tribunal faced with a motion for summary judgment is tasked with "reviewing the evidence in a light most favorable to the nonmoving party, drawing all reasonable inferences from that evidence in support of the nonmoving party's claim." Textron, Inc. v. Aetna Cas. & Sur. Co., 723 A.2d 1138, 1141 (R.I. 1999) "The party opposing a motion for summary judgment bears the burden of demonstrating the existence of a disputed issue of material fact and cannot rest on allegations or denials in the pleadings, mere conclusions, or legal opinions." Rotelli v. Catanzaro, 686 A.2d 91, 93 (R.I. 1996).

ANALYSIS

In the instant matter, the OC&I's Memorandum of Law in Support of Motion for

Summary Judgment contains the Requests for Admissions propounded to the Respondent on April 18, 2025 and July 3, 2025 along with a correlation between the "deemed admissions"; the NOV and relevant statutues and regulations.

It is clear after a review of the Rules, pleadings, admissions and other evidence properly of record that the OC&I is entitled to summary judgment on the alleged violations in the Notice of Violation against the Respondent BMP, LLC, including the upholding of the penalty assessed.

FINDINGS OF FACT

The "deemed admissions" of the Respondent to the following request for admissions are hereby established as facts:

OC&I's Request for Admissions dated April 18, 2025:

I. GENERAL ADMISSIONS

1. The subject property is located easterly of Route 116 and Mill Street in the vicinity of Hope Mill Complex, Assessor's Plat 5, Lots 1, 107, 114, and 117 in Scituate, Rhode Island and Plat 101, Lot 5 in Coventry, Rhode Island ("Easterly Property") and is located westerly of Route 116 and northerly of Hope Furnace Road in the vicinity of Hope Mill Pond Dam, Assessor's Plat 5, Lots 58 and 69 in Scituate, Rhode Island ("Westerly Property") (collectively, "Properties").

2. On 22 February 2008, RIDEM issued a Notice of Violation to Hope Mill Village Associates, LLC and Vincent R. Coccoli alleging certain violations of Rhode Island's *Freshwater Wetlands Act*, *Water Pollution Act*, *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*, *Rules and Regulations for the Investigation and Remediation of Hazardous Materials Releases*, and the *Water Quality Regulations* at the Properties.

3. On 28 February 2008, the NOV was recorded in the land evidence records of Scituate, Rhode Island.

4. Respondent took title to the Properties on 30 June 2020.

5. The Receiver's Deed specifically refers to "the Buyer's assumption of…claims and liens held by…DEM regarding that certain DEM lien and NOV."

II. FRESHWATER WETLANDS

1. The following freshwater wetlands alterations occurred on the Easterly Property without the requisite RIDEM permits:

   A. In the 200-foot Riverbank Wetlands located northeast of the Hope Mill complex between the west side of the Pawtuxet River and the east side of the Mill Tail Race: clearing, stumping, grubbing, grading, and creating soil disturbance, resulting in unauthorized alteration of approximately 228,800 square feet of Freshwater Wetland. (See NOV Section (B)(5)(a))

   B. In the 200-foot Riverbank Wetlands located north of the Hope Mill complex along the westerly side of the Mill Tail Race and easterly of Mill Street: clearing, excavating, stumping, grubbing, grading, and creating soil disturbance, resulting in unauthorized alteration of approximately 42,300 square feet of Freshwater Wetland. (See NOV Section (B)(5)(b))

   C. In the 200-foot Riverbank Wetlands located east of the Hope Mill complex along the west side of the Pawtuxet River south of the alterations described in (5)(A) above: clearing, stumping, grubbing, grading, and creating a soil disturbance, resulting in unauthorized alteration of approximately 50,000 square feet of Freshwater Wetland. (See NOV Section (B)(8)(a))

   D. In the 200-foot Riverbank Wetlands located on the wets side of the Mill Tail Race east of Mill Road and north of the wetland alterations described in (5)(B) above: clearing, excavating, stumping, grubbing, grading, and creating soil disturbance, resulting in unauthorized alteration of approximately 16,300 square feet of Freshwater Wetland. (See NOV Section (B)(8)(b))

2. The following freshwater wetlands alterations occurred on the Westerly Property without the requisite RIDEM permits:

   A. In the 200-foot Riverbank Wetlands south and southeast of the Mill Head Race and north / northeast of the Pawtuxet River: clearing, stumping, grubbing, grading, and creating soil disturbance, resulting in unauthorized alteration of approximately 40,000 square feet of Freshwater Wetland. (See NOV Section (B)(9)(a))

B. In the Forested Wetland encompassed within the 200-foot Riverbank Wetlands located southeast of the Hope Mill Dam spillway, south of the Mill Head Race gate structure and east/northeast of the Pawtuxet River: clearing excavating, stumping, grubbing, grading, and creating soil disturbance, resulting in unauthorized alteration of approximately 8,000 square feet of Freshwater Wetland. (See NOV Section (B)(9)(b))

C. Within the River and Forested Wetland (in the form of vegetated raised landforms / islands) located immediately down river from the Hope Mill Dam spillway, resulting in the unauthorized alteration of approximately 2,400 square feet of Freshwater Wetland and elimination of the Forested Wetland habitat. (See NOV Section (B)(9)(c))

D. Within the River in the area southeast of the Hope Mill Dam and south of the Mill Head Race gate structure: filling in the form of rocks, stones, and boulders, resulting in unauthorized alteration of approximately 1,200 square feet of Freshwater Wetland. (See NOV Section (B)(9)(d))

E. Within the Riverbank Wetland located between the south/southwesterly edge of the Pawtuxet River and the north easterly edge of the gravel access drive to Hope Mill Dam: clearing, excavating, stumping, grubbing, grading, and creating soil disturbance, resulting in authorized alteration of 2,250 of Freshwater Wetland. (See NOV Section (B)(9)(e))

F. In the 200-foot Riverbank Wetland along the base of Hope Mill Dam: clearing and grubbing in excess of the then-applicable regulatory exemption for dam maintenance, resulting in the authorized alteration of approximately 1,200 square feet of Freshwater Wetland. (See NOV Section (B)(10)(a))

G. Along the earthen embankment of the Hope Mill Dam, within the Forested Wetland below the Hope Mill Dam, and within the 200-foot Riverbank Wetland associated with the Pawtuxet River: clearing, grading, and filling with soil material and stones. (See NOV Section (B)(12)(a))

H. Within the River in the area southeast of the Hope Mill Dam and south of the Mill Head Race gate structure: filling in the form of rocks, stones, and boulders, resulting in alteration of approximately 1,800 square feet of Freshwater Wetland. (See NOV Section (B)(13)(a))

I. In the 200-foot Riverbank Wetland along the base of Hope Mill Dam, along the earthen embankment of the Hope Mill Dam, within the Forested

Wetland below the Hope Mill Dam, and within the 200-foot Riverbank Wetland associated with the Pawtuxet River: clearing, excavating, stumping, grubbing, grading, and creating soil disturbance, resulting in unauthorized alteration of approximately 8,300 square feet of Freshwater Wetland. (See NOV Section (B)(13)(b))

J. Within the Forested Wetland encompassed by a 200-foot Riverbank Wetland: clearing, excavating, stumping, grubbing, grading, and creating soil disturbance, resulting in authorized alteration of approximately 3,750 square feet of Freshwater Wetland. (See NOV Section (B)(13)(d))

III. WATER POLLUTION

1. Stormwater containing soils was discharged from both the Easterly Property and the Westerly Property to the Pawtuxet River (hereinafter the "discharges") without the requisite RIDEM permits. (See NOV Section (B)(22) and (23)).

2. The discharges were turbid and resulted in turbidity in the Pawtuxet River. (See NOV Section (B)(22) and (23)).

IV. NOV ORDER

1. The Restoration Requirements defined in Section (D)(2) of the NOV provide the appropriate remedy for restoring the Freshwater Wetlands at issue.

2. Section (D)(4) of the NOV has been complied with by virtue of the submission of a Site Investigation Report (SIR) for the Properties.

3. Section (D)(5) of the NOV has been complied with by virtue of the public notice conducted through the SIR process.

V. NOV PENALTY

1. The total administrative penalty of $85,000 was properly assessed pursuant to RIDEM's *Rules and Regulations for Assessment of Administrative Penalties*.

OC&I's Second Request for Admissions dated July 3, 2025:

ADMISSIONS

1. The following freshwater wetlands alterations occurred on the Easterly Property without the requisite RIDEM permits: In the 200-foot Riverbank Wetlands located north of the Hope Mill complex along the westerly side of the Mill Tail Race and easterly of Mill Street: clearing, excavating, stumping, grubbing, grading, and creating soil disturbance, resulting in unauthorized alteration of approximately 42,300 square feet of Freshwater Wetland. (See NOV Section (B)(5)(b)).

2. The following freshwater wetlands alterations occurred on the Westerly Property without the requisite RIDEM permits: Within the River and Forested Wetland (in the form of vegetated raised landforms / islands) located immediately down river from the Hope Mill Dam spillway, clearing, excavating, grading, diverting flows, and creating a disturbance, resulting in the unauthorized alteration of approximately 2,400 square feet of Freshwater Wetland and elimination of the Forested Wetland habitat. (See NOV Section (B)(9)(c)).

3. The following freshwater wetlands alterations occurred on the Westerly Property without the requisite RIDEM permits: Within the Forested Wetland encompassed by a 200-foot Riverbank Wetland southeast of the earthen embankment of the Hope Mill Dam and west/southwest of the westerly end of the spillway to the Hope Mill Dam: clearing, excavating, stumping, grubbing, grading, and creating soil disturbance, resulting in authorized alteration of approximately 3,750 square feet of Freshwater Wetland. (See NOV Section (B)(13)(c))

4. The following freshwater wetlands alterations occurred on the Westerly Property without the requisite RIDEM permits: Within the Pawtuxet River and a Forested Wetland (in the form of vegetated raised landforms or "islands") that existed in an area surrounded by river and immediately below the westerly end of the spillway to Hope Mill Dam: clearing, excavating, grading, diverting flows and generally creating disturbance, resulting in unauthorized alteration of approximately 3,000 square feet of Freshwater Wetland and the elimination of the Forested Wetland habitat. (See NOV Section (B)(13)(d)).

5. None of the freshwater wetland alterations alleged in the NOV were exempted from the RIDEM permitting requirements.

6. Discharge of stormwater containing soils is a "pollutant" within the meaning of R.I. Gen. Laws § 46-12-1(15).

CONCLUSIONS OF LAW

1. Pursuant to R.I. Gen. Laws §2-1-24, the Respondent, BMP, LLC is a "transferee" of the subject property and is responsible for compliance with the recorded NOV pertaining to freshwater wetlands violations.

2. Pursuant to R.I. Gen. Laws §46-12-9 (C) the Respondent is responsible for compliance with the recorded NOV pertaining to water pollution violations.

3. Pursuant to R.I. Gen. Laws §2-1-247 and 250-RICR-150-15-3, the Respondent altered freshwater wetlands without a permit from RIDEM.

4. Pursuant to R.I. Gen. Laws §46-12-1 et. seq. the Respondent committed water pollution violations and water quality violations as outlined in the NOV.

5. Pursuant to R.I. Gen. Laws §42-17.6-2 and 250-RICR-130-00-1, the Respondent failed to prove, by a preponderance of the evidence, that the Director failed to assess the penalty and/or economic benefit portion of the penalty in accordance with the Regulations. Therefore, the penalty in the amount of eighty-five thousand ($85,000.00) dollars was calculated correctly and supported by the affidavit of Christina Hoefsmit.

Based on the foregoing discussion and no objection having been filed by the Respondent, it is hereby:

ORDERED

1. The OC&I's Motion for Summary Judgment is hereby **GRANTED.**

2. The penalty assessed in the amount of eighty-five thousand ($85,000.00) dollars is hereby **UPHELD** and **SUSTAINED.**

Entered as an Administrative Order this 3RD day of September 2025.

David M. Spinella
Chief Hearing Officer
Administrative Adjudication Division
235 Promenade Street, 3rd Floor, Rm 350
Providence, RI 02908
(401) 537-4102

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded by first class mail to: James Bollinger, President, BMP, LLC, 44 Cove Road, Harrison ME 04040 and via interoffice mail to Jenna Giguere, Esq., DEM Office of Legal Services, and the Office of Compliance & Inspection, 235 Promenade Street, Providence, RI 02908 on this 3 day of September 2025.

Mary Dalton

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS FINAL DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A COMPLAINT FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.