

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

**IN RE: Roderick T. Nunes
Diane M. Nunes
4 N PROPERTIES, LLC**

FILE NO.: OCI-FW-18-23

NOTICE OF VIOLATION

A. Introduction

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

B. Administrative History

On 14 February 2018, DEM inspected the property that is the subject of this Notice of Violation (“NOV”). At that time DEM’s inspector spoke with Roderick Nunes. DEM’s inspector informed Mr. Nunes of a portion of the violations that are the subject of the NOV and the specific actions required to correct those violations. Mr. Nunes stated that when he acquired the property he was told by the prior owner (4 N PROPERTIES, LLC) that he could use the area for storage, and he did not know he was doing anything wrong. Further, Mr. Nunes stated that he would move quickly to resolve the violations. The violations were not resolved, and on 27 July 2018, DEM issued a Notice of Intent to Enforce (“NIE”) to Mr. Nunes and Diane Nunes. The NIE required the violations be corrected by 31 October 2018. On 8 August 2018, the NIE was delivered. On 27 November 2018, DEM’s inspector spoke with Mr. Nunes who stated that he had spoken with a consultant and had begun working to correct the violations. DEM’s inspector informed Mr. Nunes that he should submit a letter to DEM stating his willingness to comply and requesting an extension until Spring 2019 to complete the work. Mr. Nunes stated that he would have his consultant send a letter and that he wanted to get the violations resolved. DEM did not receive a letter. On 18 April 2019, DEM’s inspector spoke with Mr. Nunes’ consultant while the consultant was reviewing DEM’s file. DEM’s inspector explained what was required to correct the violations. The consultant stated that he would inform his clients and that they would not be happy with what DEM was requiring. As of the date of the NOV, Respondents have not fully complied with the NIE.

C. Facts

- (1) The property is located approximately 1,000 feet south/southeast of the southwestern intersection of Industrial Lane and Clyde Street, Plat 18, Lot 268 in the Town of West Warwick, Rhode Island (“Lot 268”).
- (2) Roderick T. Nunes and Diane M. Nunes (“Nunes”) own Lot 268.

- (3) Lot 268 was previously part of a larger parcel identified as Plat 18, Lot 246 in the Town of West Warwick, Rhode Island (“Lot 246”).
- (4) 4 N PROPERTIES, LLC (“4N”) owned Lot 246. 4N acquired Lot 246 on 17 November 2004.
- (5) On 27 April 2016, 4N subdivided Lot 246 into five separate parcels, one of which was Lot 268.
- (6) On 29 June 2016, 4N sold Lot 268 to Nunes.
- (7) On 14 February 2018 and 26 February 2019, DEM inspected Lot 268. The inspection revealed clearing and filling (in the form of at least wood chips, dumpsters, stumps and soil material) within Riverbank Wetland (portions of which are Floodplain) associated with North Branch Pawtuxet River. These activities have resulted in the alteration of approximately 30,000 square feet of freshwater wetland and is shown in red on the sketch that is attached hereto and incorporated herein as Exhibit A (the “Altered Wetland”).
- (8) DEM reviewed aerial photographs of Lot 268 taken in April 2004 (“2004”), 2008, 2011, 2014, 2015, August 2016 (“2016”) and Spring 2019 (“2019”). The review revealed the following:
 - (a) In 2004, the wetland alterations described in subsection C(7) above were not present;
 - (b) In 2008, within the eastern portion of the Altered Wetland, clearing and filling is evident;
 - (c) In 2011, within the eastern portion of the Altered Wetland, additional clearing and filling is evident;
 - (d) In 2014 and 2015, within the eastern portion of the Altered Wetland, the clearing and filling is generally unchanged from 2011;
 - (e) In 2016, within the eastern portion of the Altered Wetland, the clearing and filling is generally unchanged from 2015, and within the western portion of the Altered Wetland, some of the alterations described in subsection C (7) are evident; and
 - (f) In 2019, within the eastern portion of the Altered Wetland, the clearing and filling is generally unchanged from 2016, and within the western portion of the Altered Wetland, the full extent of the alterations described in subsection C(7) are evident.

- (9) The activities described in subsections C(7) and C(8) above were not exempt in accordance with Rule 6.00 [recently amended to Part 1.6] of the Rhode Island Code of Regulations titled *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1)* (the “Wetland Regulations”).
- (10) Respondents did not receive a permit from DEM to alter the freshwater wetlands on the Property in the areas described in subsections C(7) and C(8) above.
- (11) Respondents are jointly responsible for the unauthorized alterations described in subsections C(7) and C(8) 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 DEM.
- (2) **Wetland Regulations, Rule 5.01 [recently amended to Part 1.5(A)(1)]** – prohibiting activities which may alter freshwater wetlands without a permit from DEM, unless the activities are exempt in accordance with Rule 6.00 [recently amended to Part 1.6].

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), Nunes is hereby ORDERED to:

- (1) Cease and desist from any further alteration of the above described freshwater wetlands, and
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (3) Prior to the initiation of restoration activities, properly install a continuous, uninterrupted line of appropriate soil erosion/sediment controls (e.g., silt fence, staked haybales and/or biodegradable fiber logs/filter socks) along the landward edge of the Altered Wetland. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the completion of the required wetland restoration activities, and until such time that all the surrounding areas are properly stabilized. At the discretion and direction of DEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.

- (4) Remove all unauthorized fill material (that is, at least wood chips, stumps, soil material, and stored dumpsters) from the Altered Wetland. Fill must be removed down to original grade to match the surface elevations of the undisturbed surrounding areas. Any fill that meets the definition of solid waste in Rhode Island's *Refuse Disposal Act* and the Rhode Island Code of Regulations titled *Rules and Regulations for Solid Waste Management Facilities and Organic Waste Management Facilities (250-RICR-140-05-1)* must be properly disposed of at a licensed solid waste management facility and receipts of the proper disposal of all solid waste must be provided to DEM. All remaining fill that is removed must be deposited in an appropriate upland location, outside of all freshwater wetlands.
- (5) Following the removal of the fill material as described in subsection E(4) above, all disturbed surface areas within the Altered Wetland must be covered with plantable soil (4 inches minimum), as needed, seeded with a wildlife conservation seed mixture and covered with a thick mat of straw mulch, which is free of any contaminants that could promote the spread of invasive plant species.
- (6) All portions of the Altered Wetland must be planted with trees and shrubs, as follows:
- (a) Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, 4 feet tall after planting, throughout the areas defined above. Tree plantings must include an equal distribution of at least 4 of the following selections:
- White pine, *Pinus strobus*
Northern white cedar, *Thuja occidentalis*
Red maple, *Acer rubrum*
Box elder (ashleaf maple), *Acer negundo*
White ash, *Fraxinus americana*
White oak, *Quercus alba*
Northern red oak, *Quercus rubra*
Sassafras, *Sassafras albidum*
Gray birch, *Betula populifolia*
Black birch, *Betula lenta*
American beech, *Fagus grandifolia*
- (b) Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, 5 feet on center, 3 feet tall after planting, throughout the area defined above. Shrub plantings must include an equal distribution of at least 5 of the following selections:
- Mountain laurel, *Kalmia latifolia*
Giant rhododendron, *Rhododendron maximum* (shaded areas only)
Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*

Silky dogwood, *Cornus amomum*
Arrowwood (southern), *Viburnum dentatum*
American cranberrybush, *Viburnum trilobum*
Mapleleaf viburnum, *Viburnum acerifolium*
Inkberry, *Ilex glabra*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Sweet pepperbush, *Clethra alnifolia*
Bayberry, *Myrica pennsylvanica*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

- (c) In addition, balled and burlapped or transplanted evergreen screening tree species must be planted in a straight line, 8 feet on-center (apart), 5 to 6 feet tall after planting, along the landward edge of the Altered Wetland. The tree species to be utilized for this screening line (described above) must be chosen from the following selections:

Northern white cedar (Eastern arborvitae), *Thuja occidentalis*
White pine, *Pinus strobus*
White spruce, *Picea glauca*

- (7) Following the completion of the planting as described in subsection E(6) above, place large boulders or large (3 feet by 2 feet by 2 feet) concrete blocks on the landward edge of the Altered Wetland.
- (8) If any of the required plantings fail to survive at least 1 full growing season from the time they have been planted, replant and maintain the same plant species until such time that survival is maintained over 1 full growing season.
- (9) 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 alterations are allowed in the restored wetland area, or within other freshwater wetlands on the Property, without first obtaining a permit from DEM, unless the activity is exempt under the Wetland Regulations.
- (10) Upon stabilization of all disturbed areas, all non-biodegradable erosion and sedimentation controls must be removed from the freshwater wetlands. 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, outside of all freshwater wetlands.
- (11) The above restoration work shall be completed by **1 May 2020**.

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:
 - (a) Nunes – **\$10,000**
 - (b) 4N – **\$10,000**
- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check or money order made payable to the “General Treasury – Water & Air Protection Program Account” and shall be forwarded to DEM’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (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.

G. Right to Administrative Hearing

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

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, Room 350
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**

- (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 the Rhode Island Code of Regulations titled *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
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the Town of West Warwick, Rhode Island wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 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 DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to me at (401) 222-1360 ext. 7400.

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
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____ 2019
the within Notice of Violation was forwarded to:

Roderick T. Nunes
1 Country Lane
Hope, RI 02831

Diane M. Nunes
1 Country Lane
Hope, RI 02831

4 N PROPERTIES, LLC
c/o Joel S. Chase, Esquire
300 Metro Center Boulevard, Suite 150A
Warwick, RI 02886

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS
 File No.: OCI-FW-18-23
 Respondents: Nunes and 4N

| 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 | Type I <i>(\$10,000 Max. Penalty) *</i> | Major | \$10,000 | 1 violation | \$10,000 |
| D (1) and D (2) Wetland Alterations | Type I <i>(\$10,000 Max. Penalty) *</i> | Major | \$10,000 | 1 violation | \$10,000 |
| SUB-TOTAL | | | | | \$20,000 |

*Maximum Penalties represent the maximum penalty amounts per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE

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

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

A review of the record in this matter has revealed that 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.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$20,000

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations
 VIOLATION NO.: D (1) and D (2)

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

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

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*

- (1) **The extent to which the act or failure to act was out of compliance:** Nunes altered freshwater wetlands on Lot 268 by clearing and filling (in the form of at least wood chips, dumpsters, stumps and soil material) within Riverbank Wetland (portions of which are Floodplain) associated with North Branch Pawtuxet River. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.
- (2) **Environmental conditions:** The Riverbank Wetland on Lot 268 is approximately ¾ acre (30,000 square feet). Vegetation noted within the Riverbank Wetland includes at least oaks, beech and birch. The Riverbank Wetland is considered a valuable riparian corridor. The western portion of the Riverbank Wetland was forested and undisturbed when Nunes acquired Lot 268. The eastern portion of the Riverbank Wetland was mostly cleared and disturbed when Nunes acquired Lot 268; however, Nunes continued to maintain the eastern portion of the Riverbank Wetland in an altered condition by using it for storage of wood chips and other materials.
- (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:** Approximately 3 years. The alterations have been continuous since Nunes acquired Lot 268 on 29 June 2016.
- (6) **Areal extent of the violation:** The western portion of the Riverbank Wetland on Lot 268 is approximately 15,000 square feet, and the eastern portion of the Riverbank Wetland on Lot 268 is approximately 15,000 square feet.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Nunes did not take reasonable and appropriate steps to prevent the noncompliance. Roderick Nunes had knowledge of the Riverbank Wetland when Lot 268 was acquired, and he had knowledge of the need for a permit from DEM prior to altering the Riverbank Wetland. On 9 December 1987, DEM issued an insignificant alteration permit to Mr. Nunes for alterations to the Riverbank Wetland that was located directly across North Branch Pawtuxet River from Lot 268. Nunes has only removed the dumpsters to mitigate the noncompliance, despite receiving a Notice of Intent to Enforce from DEM on August 8, 2018 requiring that they fully restore the altered wetlands by 31 October 2018 by removing all fill from the Riverbank Wetland and replanting the Riverbank Wetland with trees and shrubs.
- (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:** Nunes had complete control over the violation, and the violation was foreseeable. Roderick Nunes had knowledge of the Riverbank Wetland when Lot 268 was acquired and knowledge of the Wetland Regulations, yet Nunes failed to apply to DEM for a permit prior to altering the Riverbank Wetland.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000 | | TYPE I | TYPE II | TYPE III |
|---|--------------|--|--------------------|--------------------|
| DEVIATION FROM STANDARD | MAJOR | \$5,000 to \$10,000 \$10,000 | \$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
 VIOLATION NO.: D (1) and D (2)

| TYPE | | |
|---|--|---|
| <u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment. | _____TYPE II INDIRECTLY related to protecting health, safety, welfare or environment. | _____TYPE III INCIDENTAL to protecting health, safety, welfare or environment. |
| DEVIATION FROM THE STANDARD | | |
| THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED. | | |
| <p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: 4N altered freshwater wetlands on Lot 268 by clearing and filling (in the form of at least soil material) within the eastern portion of the Riverbank Wetland (a portion of which is Floodplain) associated with North Branch Pawtuxet River. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program. (2) Environmental conditions: The Riverbank Wetland on Lot 268 is approximately ¾ acre (30,000 square feet). Vegetation noted within the Riverbank Wetland includes at least oaks, beech and birch. The Riverbank Wetland is considered a valuable riparian corridor. The Riverbank Wetland on Lot 268 was forested and undisturbed when 4N acquired Lot 246. (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 8 years. Clearing and filling within the eastern portion of the Riverbank Wetland on Lot 268 is evident in the 2008 aerial photographs. More extensive clearing and filling within the eastern portion of the Riverbank Wetland on Lot 268 is evident in the 2011 aerial photographs. The eastern portion of the Riverbank Wetland on Lot 268 remain cleared and filled as evident in the 2014, 2015 and 2016 aerial photographs. (6) Areal extent of the violation: The eastern portion of the Riverbank Wetland on Lot 268 is approximately 15,000 square feet. | | |
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** 4N did not take reasonable and appropriate steps to prevent the noncompliance. 4N had knowledge of the Riverbank Wetland on Lot 268 when 4N acquired Lot 246 and had knowledge of the need for a permit from DEM prior to altering the Riverbank Wetland. 4N acquired Lot 246 on 17 November 2004. On 11 March 2004, DEM inspected Lot 246 and documented alterations to the same Riverbank Wetland, but in a separate portion located to the north of Lot 268. DEM's inspector spoke with Ronald Nunes at the time of the inspection. Mr. Nunes stated that 4N was leasing Lot 246 (but was in the process of acquiring it) and was responsible for the alterations. DEM's inspector advised Mr. Nunes of the presence of the Riverbank Wetland and the actions required to restore the Riverbank Wetland, which included removal of stockpiles of fill and installation of erosion controls. Mr. Nunes agreed to comply. On 9 June 2004, DEM inspected Lot 246 and documented that the Riverbank Wetland was restored.
- (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:** 4N had complete control over the violation, and the violation was foreseeable. 4N had knowledge of the Riverbank Wetland on Lot 268 when Lot 246 was acquired and knowledge of the Wetland Regulations, yet 4N failed to apply to DEM for a permit prior to altering the Riverbank Wetland on Lot 268.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000 | | TYPE I | TYPE II | TYPE III |
|---|--------------|--|--------------------|--------------------|
| DEVIATION FROM STANDARD | MAJOR | \$5,000 to \$10,000 \$10,000 | \$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 |