

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

**IN RE: Westerly Granite Co., Inc.  
Sacco Enterprises, Inc.  
Copar Quarries of Westerly, LLC**

**FILE NOS.: FW C12-0019  
and FW-12-17; WP-12-47  
and WP 12-037; and  
SW-12-33**

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 February 21, 2012 DEM issued a verbal order to Copar Quarries of Westerly, LLC (“Copar”) to cease altering the freshwater wetlands that are the subject of this notice. On April 3, 2012 DEM issued an informal written notice to Westerly Granite Co., Inc. (“Westerly Granite”) and Copar for the unauthorized discharge of stormwater associated with mineral mining and processing. The notice advised Westerly Granite and Copar that the companies will remain in violation until the stormwater discharges cease and the land is stabilized or approval is obtained from DEM to discharge stormwater and the appropriate controls are constructed. In response to the notice, Copar retained a consulting engineer to prepare stormwater permit applications and a stormwater pollution prevention plan. Thus far, the discharges of stormwater continue and no applications have been submitted to DEM to obtain approval to do so.

C. Facts

- (1) The property is located approximately 700 feet west-northwest of the intersection of Church Street (Rt. 216) and Buckeye Brook Road, approximately 360 feet southwest of the intersection of Church Street and Buckeye Brook Road and approximately 1270 feet to 1750 feet west-southwest of the intersection of Church Street and Buckeye Brook Road, on parcels 45/21/4, 55/21/5, and 55/1 in the town of Westerly, Rhode Island (the “Property”).
- (2) Westerly Granite Co. Inc. (“Westerly Granite”) owns parcel 55/1. The New Castle Realty Company owns parcels 45/21/4 and 55/21/5.

- (3) Copar Quarries of Westerly, LLC (“Copar”) is currently engaged in mineral mining and processing on parcel 55/1. Copar began processing on or about October 2010.
- (4) Sacco Enterprises, Inc. (“Sacco”) formerly engaged in mineral mining and processing on parcel 55/1. Sacco was processing from at least April 2008 through November 2008.
- (5) DEM inspected the Property on February 21, 2012. The inspection revealed the following:
  - (a) Filling (in the form of at least soil material, stone and gravel roadway) and installing a culvert within a Stream located at the southern property line of parcel 55/21/5. This activity has resulted in the unauthorized alteration of approximately 30 linear feet of freshwater wetland.
  - (b) Clearing and filling (in the form of at least soil material, stone, boulders and a gravel roadway) within Riverbank Wetland located generally along the southern property line of parcel 55/21/5. This activity has resulted in the unauthorized alteration of approximately 12,000 square feet of freshwater wetland.
  - (c) Clearing, filling (in the form of at least soil material, stone and boulders) within Perimeter Wetland located near the southern property line of parcel 45/21/4. This activity has resulted in the unauthorized alteration of approximately 10,000 square feet of freshwater wetland.
  - (d) Clearing, filling (in the form of at least soil material, stone and boulders) within Swamp in the southern end of parcel 45/21/4. This activity has resulted in the unauthorized alteration of approximately 2,000 square feet of freshwater wetland.
  - (e) Clearing, filling (in the form of at least soil material, stone and boulders) within Perimeter Wetland located adjacent to the quarry ponds on parcel 55/1 (the “Quarry Ponds”). This activity has resulted in the unauthorized alteration of approximately 47,000 square feet of freshwater wetland.
  - (f) Filling (in the form of soil material) within a Forested Wetland on parcel 55/1. This activity has resulted in the unauthorized alteration of approximately 200 square feet of freshwater wetland.
  - (g) Stormwater from parcel 55/1 is discharging into the Quarry Ponds.
- (6) On April 16, 2012 DEM inspected the Property. The inspection revealed approximately twenty one (21) cubic yards of solid waste (in the form of

glass bottles and canning jars, metals cans, plywood, vinyl siding, asphalt shingles, and other mixed solid waste) deposited on the ground and partially buried on parcel 55/1.

- (7) The Respondents did not receive approval from DEM to alter the freshwater wetlands on the Property in the areas specified above.
- (8) As of the date of this Notice of Violation (“NOV”), Westerly Granite and Copar have not received approval from DEM to discharge stormwater associated with mining mining and processing on the Property to the waters of the State.
- (9) As of the date of this NOV, Westerly Granite has not received approval from DEM to dispose of solid waste on the Property.

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 the DEM.
- (2) **R.I. Gen. Laws Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (3) **R.I. Gen. Laws Section 23-18.9-5** – prohibiting the disposal of solid waste at other than a solid waste management facility.
- (4) **DEM’s Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act, Rule 5.01** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (5) **DEM’s Water Quality Regulations, Rule 13(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to the waters of the State without having obtained all required approvals from the DEM.
- (6) **DEM’s Regulations for Rhode Island Pollutant Discharge Elimination, Rule 31(a)(1)(i)** – requiring a permit for a stormwater discharge associated with industrial activity.

E. Order

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

- (1) **IMMEDIATELY** cease and desist from any further alteration of the above described freshwater wetlands.
- (2) **IMMEDIATELY** cease the discharge of stormwater to the waters of the State. No discharge of stormwater shall occur until you obtain a stormwater permit from the DEM and construct the stormwater controls required pursuant to the permit.
- (3) **By October 1, 2012** 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 or silt fence between all areas to be restored and the adjacent undisturbed freshwater wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced) during and following the completion of the required wetland restoration activities, and until such time that all 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.
- (b) Remove all unauthorized fill material from the Stream, Riverbank Wetland, Swamp, Perimeter Wetlands, and Forested Wetland. The fill material must be removed down to the grade that existed prior to filling. Any fill material that is embedded in the original undisturbed soil substrate also must be removed from the wetlands. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all freshwater wetlands.
- (c) Following fill removal from the Swamp and Forested Wetland, apply a wetland seed mix to the disturbed surface areas and a wildlife conservation seed mix to any re-established side slopes, with a mat of spread hay mulch over all disturbed surface areas.
- (d) Following fill removal from the Perimeter Wetlands and Riverbank Wetland, all disturbed soils shall be loamed (if necessary), seeded with a wildlife conservation grass seed mixture, and covered with a mat of loose hay mulch. Hydroseed, containing the proper seed components and mixed with a proper tackifier (stabilizing mulch material), may be utilized in appropriate areas in lieu of the above stabilization measures. If necessary, steeply sloping areas or denuded/disturbed areas to be left exposed for long periods of time must be covered with excelsior matting or jute mesh.

- (e) All slopes resulting from fill removal must be graded to a maximum 3:1 slope, with the top of the slope matching the existing surrounding undisturbed areas.
- (f) All areas that were cleared in the Perimeter Wetlands and Riverbank Wetland must be replanted with trees and shrubs as required below:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, ten (10) feet on center, four (4) feet tall after planting, throughout the areas defined above. Tree species must include an equal distribution of at least four of the following selections:

White pine, *Pinus strobus*  
 Northern white cedar, *Thuja occidentalis*  
 Red maple, *Acer rubrum*  
 White ash, *Fraxinus americana*  
 White oak, *Quercus alba*  
 Northern red oak, *Quercus rubra*  
 Black birch, *Betula lenta*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion five (5) feet on center, three (3) feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least six 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*  
 Highbush blueberry, *Vaccinium corymbosum*  
 Lowbush blueberry, *Vaccinium angustifolium*  
 Sweet pepperbush, *Clethra alnifolia*  
 Bayberry, *Myrica pennsylvanica*  
 Black chokeberry, *Aronia melanocarpa*  
 Witchhazel, *Hamamelis virginiana*

- (g) To ensure the survival of all plantings, each planting hole must be cleared of any underlying rock and properly prepared to a depth of eighteen (18) inches.
- (h) If any or all of the required plantings fail to survive at least two (2) years from the time that planting has been verified by DEM, the

same plant species shall be replanted and maintained until such time that survival is maintained over two (2) full years.

- (i) 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 areas, or within other freshwater wetlands on the Property, without first obtaining a permit from DEM.
- (j) Upon stabilization of all disturbed areas all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) must be removed from the freshwater wetlands. Staked haybales, spread hay 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.
- (k) Contact Mr. Howard Cook at DEM (401)222-1360 ext. 7161 prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No work shall commence until such time that you have met in the field with DEM.

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

- (1) **Within sixty (60) days of receipt of the NOV**, remove all solid waste from the Property and dispose of it at a licensed solid waste management facility. The solid waste shall not be burned or buried on the Property.
- (2) **Within ten (10) days of completion of the removal of the solid waste**, submit documentation to DEM that the solid waste was disposed at a licensed solid waste management facility through receipts, bills, or weight slips.

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) **Sacco and Westerly Granite for Two Thousand Seven Hundred and Fifty Dollars (\$2,750.00)**
  - (b) **Sacco, Copar and Westerly Granite for Six Thousand Five Hundred Dollars (\$6,500.00)**

- (c) **Copar and Westerly Granite for Three Thousand Dollars (\$3,000.00)**
  - (d) **Westerly Granite for Two Thousand Five Hundred Dollars (\$2,500.00)**
- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the DEM within twenty (20) days of your receipt of this NOV. Payment in the form of a certified check, cashier's check or money order shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767. Payments for items F(1)(a) through F(1)(c), totaling an the amount of Twelve Thousand Two Hundred and Fifty Dollars (\$12,250.00), shall be made payable to the "General Treasury - Water & Air Protection Program Account" and payment for item F(1)(d), in the amount of Two Thousand Five Hundred Dollars (\$2,500.00), shall be made payable to the "General Treasury – Environmental Response Fund".
- (3) Penalties assessed against the respondents in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with this NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM 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 twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk  
DEM - Administrative Adjudication Division  
One Capitol Hill, 2<sup>ND</sup> Floor  
Providence, RI 02903

- (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 Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Richard M. Bianculli Jr., Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767
  - (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
  - (4) Each respondent must file a separate and timely request for an administrative hearing before 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 with regard to any violation set forth herein, then this 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 (v) and 42-17.6-4(b) and (c).
  - (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
  - (6) An original signed copy of this NOV is being forwarded to the town of Westerly wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Sections 2-1-24, 23-18.9-13, and 46-12-9, as amended.
  - (7) This 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) Richard M. Bianculli Jr. at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to me at the Office of Compliance and Inspection at (401) 222-1360 extension 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

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David E. Chopy, Chief  
DEM Office of Compliance and Inspection

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

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 2012  
the within Notice of Violation was forwarded to:

Westerly Granite Co. Inc.  
c/o George A. Comolli, Esq., Registered Agent  
15 Franklin Street  
Westerly, RI 02891

Sacco Enterprises, Inc.  
c/o Victor J. Orsinger, Esq., Registered Agent  
42 Granite Street  
Westerly, RI 02891

Copar Quarries of Westerly, LLC  
c/o Randal S. Roberge, Registered Agent  
271 Church Street, PO Box 291  
Bradford, RI 02808

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

**Programs:** OFFICE OF COMPLIANCE AND INSPECTION, MULTI-MEDIA WETLANDS, WATER POLLUTION, and SOLID WASTE  
**File Nos.:** FW C12-0019 and FW-12-17, WP-12-47 and WP 12-037, and SW-12-33  
**Respondents:** Westerly Granite Co., Inc., Sacco Enterprises, Inc., and Copar Quarries of Westerly, LLC

<b>GRAVITY OF VIOLATION</b>					
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 (4) – Alteration of a Stream; Fact C(5)(a)	Type I (\$5,000 Max. Penalty)*	Minor	\$750	1 violation	\$750.00
D(1) and (4) – Alteration of Riverbank Wetland; Fact C(5)(b)	Type I (\$5,000 Max. Penalty)*	Moderate	\$2,000	1 violation	\$2,000.00
D(1) and (4) – Alteration of Perimeter Wetland; Fact C(5)(c)	Type I (\$5,000 Max. Penalty)*	Moderate	\$1,500	1 violation	\$1,500.00
D(1) and (4) – Alteration of a Swamp; Fact C(5)(d)	Type I (\$5,000 Max. Penalty)*	Minor	\$1,000	1 violation	\$1,000.00
D(1) and (4) – Alteration of Perimeter Wetland; Fact C(5)(e)	Type I (\$5,000 Max. Penalty)*	Major	\$4,000	1 violation	\$4,000.00
D(1) and (4) – Alteration of a Forested Wetland; Fact C(5)(f)	Type I (\$5,000 Max. Penalty)*	Minor	\$500	1 violation	\$500.00
D(2), (5) and (6) – Discharge of stormwater associated with industrial activity without a permit	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
D(3) – Disposal of solid waste at other than a licensed solid waste management facility	Type I (\$ 25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
<b>SUB-TOTAL</b>					<b>\$14,750.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$14,750.00**

# PENALTY MATRIX WORKSHEET

CITATION: Alteration of a Stream, Fact C(5)(a)

VIOLATION NO.: D (1) and (4)

TYPE				
<u>X</u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.		_____ TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		_____ TYPE III <i>INCIDENTAL</i> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD				
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.				
<b>FACTORS CONSIDERED:</b> Taken from Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties (A) <b>The extent to which the act or failure to act is out of compliance:</b> Sacco Enterprises, Inc. (Sacco) and Westerly Granite, Co. Inc (Westerly Granite) altered freshwater wetlands by filling (in the form of at least soil material, stone, and gravel roadway) and installing a culvert within a Stream. The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program. (B) <b>Environmental conditions:</b> The Stream was a well-vegetated stable watercourse with no culverts or fill in place prior to the unauthorized alteration. (C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation. (D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation. (E) <b>The duration of the violation:</b> Full duration unknown. Based on November 10, 2008 letter from Peter Sacco, DEM believes the alterations occurred in 2008. (F) <b>The areal extent of the violation:</b> The aerial extent of the violation is approximately 30 linear feet. (G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:</b> Sacco and Westerly Granite failed to obtain the appropriate permit from DEM. (H) <b>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:</b> Considered, but not utilized for this calculation. (I) <b>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:</b> Sacco and Westerly Granite had complete control over the project and had an obligation to protect the wetlands. (J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Considered, but not utilized for this calculation.				
MAJOR		MODERATE		<u>X</u> MINOR
Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250 <b>\$750</b>	\$250 to \$500	\$100 to \$250

# PENALTY MATRIX WORKSHEET

CITATION: Alteration of Riverbank Wetland, Fact C(5)(b)

VIOLATION NO.: D (1) and (4)

TYPE				
<u>X</u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE III <i>INCIDENTAL</i> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD				
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.				
<b>FACTORS CONSIDERED:</b>				
Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties				
(A) <b>The extent to which the act or failure to act is out of compliance:</b> Sacco Enterprises, Inc. (Sacco) and Westerly Granite, Co. Inc (Westerly Granite) altered freshwater wetlands by clearing and filling (in the form of at least soil material, stone, boulders, and a gravel roadway) within Riverbank Wetland. The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) <b>Environmental conditions:</b> The Riverbank Wetland was previously forested throughout the altered area.				
(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.				
(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.				
(E) <b>The duration of the violation:</b> Full duration unknown. Based on November 10, 2008 letter from Peter Sacco, DEM believes the alterations occurred in 2008.				
(F) <b>The areal extent of the violation:</b> The aerial extent of the violation is 12,000 ft <sup>2</sup> .				
(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:</b> Sacco and Westerly Granite failed to obtain the appropriate permit from DEM.				
(H) <b>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:</b> Considered, but not utilized for this calculation.				
(I) <b>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:</b> Sacco and Westerly Granite had complete control over the project and had an obligation to protect the wetlands.				
(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Considered, but not utilized for this calculation.				
MAJOR		<u>X</u> MODERATE		MINOR
Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	<b>MODERATE</b>	\$1,250 to \$2,500 <b>\$2,000</b>	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250

# PENALTY MATRIX WORKSHEET

CITATION: Alteration of Perimeter Wetland, Fact C(5)(c)  
 VIOLATION NO.: D (1) and (4)

TYPE				
<u>X</u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE III <i>INCIDENTAL</i> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD				
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.				
<b>FACTORS CONSIDERED:</b>				
Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties				
(A) <b>The extent to which the act or failure to act is out of compliance:</b> The Respondents altered a wetland by clearing, filling (in the form of at least soil material, stone, and boulders) within Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) <b>Environmental conditions:</b> Part of the Perimeter Wetland was previously filled, but had revegetated with trees and shrubs prior to the latest unauthorized alterations.				
(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.				
(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.				
(E) <b>The duration of the violation:</b> A review of aerial photographs revealed that the alterations occurred between April 2003 and April 2012.				
(F) <b>The areal extent of the violation:</b> The aerial extent of the violation is 10,000 ft <sup>2</sup> .				
(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:</b> The Respondents failed to obtain the appropriate permit from DEM.				
(H) <b>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:</b> Considered, but not utilized for this calculation.				
(I) <b>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:</b> The Respondents had complete control over the project and had an obligation to protect the wetlands.				
(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Considered, but not utilized for this calculation.				
MAJOR		<u>X</u> MODERATE		MINOR
Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	<b>MODERATE</b>	\$1,250 to \$2,500 <b>\$1,500</b>	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250

# PENALTY MATRIX WORKSHEET

CITATION: Alteration of Swamp, Fact C(5)(d)

VIOLATION NO.: D (1) and (4)

TYPE				
<u>X</u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE III <i>INCIDENTAL</i> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD				
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.				
<b>FACTORS CONSIDERED:</b>				
Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties				
(A) <b>The extent to which the act or failure to act is out of compliance:</b> The Respondents altered a wetland by clearing and filling (in the form of at least soil material, stone, and boulders) within Swamp. The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) <b>Environmental conditions:</b> A portion of the Swamp in this area was previously disturbed with fill but had recovered with tree, shrub, and other wetland vegetation prior to the latest unauthorized alteration.				
(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.				
(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.				
(E) <b>The duration of the violation:</b> A review of aerial photographs revealed that the alterations occurred between April 2008 and April 2011.				
(F) <b>The areal extent of the violation:</b> The aerial extent of the violation is 2,000 ft <sup>2</sup> .				
(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:</b> The Respondents failed to obtain the appropriate permit from DEM.				
(H) <b>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:</b> Considered, but not utilized for this calculation.				
(I) <b>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:</b> The Respondents had complete control over the project and had an obligation to protect the wetlands.				
(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Considered, but not utilized for this calculation.				
MAJOR		MODERATE		<u>X</u> MINOR
Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250 <b>\$1,000</b>	\$250 to \$500	\$100 to \$250

## PENALTY MATRIX WORKSHEET

CITATION: Alteration of Perimeter Wetland, Fact C(5)(e)  
 VIOLATION NO.: D (1) and (4)

TYPE				
<u>X</u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		TYPE III <i>INCIDENTAL</i> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD				
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.				
<b>FACTORS CONSIDERED:</b>				
Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties				
(A) <b>The extent to which the act or failure to act is out of compliance:</b> The Respondents altered a wetland by clearing, filling (in the form of at least soil material, stone, and boulders) within Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of major significance to the regulatory program.				
(B) <b>Environmental conditions:</b> The Perimeter Wetland was previously forested in the areas located around the quarry ponds.				
(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.				
(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.				
(E) <b>The duration of the violation:</b> A review of aerial photographs revealed that the alterations occurred between April 2008 and April 2011.				
(F) <b>The areal extent of the violation:</b> The aerial extent of the violation is 47,000 ft <sup>2</sup> .				
(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:</b> The Respondents failed to obtain the appropriate permit from DEM.				
(H) <b>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:</b> Considered, but not utilized for this calculation.				
(I) <b>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:</b> The Respondents had complete control over the project and had an obligation to protect the wetlands.				
(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> 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 \$ 5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000 <b>\$4,000</b>	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250

## PENALTY MATRIX WORKSHEET

CITATION: Alteration of Forested Wetland, Fact C(5)(f)  
 VIOLATION NO.: D (1) and (4)



<b>TYPE</b>				
<u><b>X</b></u> <b>TYPE I</b> <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.		<b>TYPE II</b> <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		<b>TYPE III</b> <i>INCIDENTAL</i> to protecting health, safety, welfare or environment.
<b>DEVIATION FROM THE STANDARD</b> <small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>				
<b>FACTORS CONSIDERED:</b> Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties				
(A) <b>The extent to which the act or failure to act is out of compliance:</b> Copar Quarries of Westerly, LLC (Copar) and Westerly Granite Co., Inc (Westerly Granite) altered a wetland by filling (in the form of soil material) within a Forested Wetland. The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) <b>Environmental conditions:</b> The Forested Wetland was a natural vegetated area containing no fill prior to the unauthorized alteration.				
(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.				
(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.				
(E) <b>The duration of the violation:</b> A review of aerial photographs revealed that the alterations occurred after April 2011.				
(F) <b>The areal extent of the violation:</b> The aerial extent of the violation is 200 ft <sup>2</sup> .				
(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:</b> Copar and Westerly Granite failed to obtain the appropriate permit from DEM.				
(H) <b>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:</b> Considered, but not utilized for this calculation.				
(I) <b>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:</b> Copar and Westerly Granite had complete control over the project and had an obligation to protect the wetlands.				
(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Considered, but not utilized for this calculation.				
<b>MAJOR</b>		<b>MODERATE</b>		<u><b>X</b></u> <b>MINOR</b>
Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 5,000		<b>TYPE I</b>	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500	\$500 to \$1,250	\$250 to \$500
	<b>MINOR</b>	\$500 to \$1,250 <b>\$500</b>	\$250 to \$500	\$100 to \$250

# PENALTY MATRIX WORKSHEET

CITATION: Discharge of stormwater associated with industrial activity without a permit  
 VIOLATION NO.: D (2), (5) and (6)

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

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

**FACTORS CONSIDERED:**

Taken from Section 10(a)(2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Copar Quarries of Westerly, LLC (Copar) and Westerly Granite Co., Inc (Westerly Granite) are discharging storm water associated with industrial activity without a permit from the DEM.
- (B) **Environmental conditions:** The ponds that the storm water is discharging into are abandoned quarries with an unknown depth and vertical granite side slopes. The DEM has no information that the ponds have been impacted by the stormwater runoff.
- (C) **Amount of the pollutant:** Unknown – depends on the pollutants deposited on the land and the intensity and duration of rain storms.
- (D) **Toxicity or nature of the pollutant:** Inorganic sediment (sand, soil, silt, rock). Sediment can cause turbidity within the water (and affect light penetration and plant growth) and settle to smother benthic organisms.
- (E) **Duration of the violation:** Full duration unknown - at least 3 ½ months. DEM first documented the violation on February 21, 2012.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Copar and Westerly Granite did not take reasonable action to prevent the violation. On April 3, 2012 the DEM issued a notice to Copar and Westerly Granite advising the companies of the violation and the actions necessary to correct the violation. In response to the notice, Copar retained a consulting engineer to prepare the permit applications and develop a Stormwater Pollution Prevention Plan; however, thus far, no applications have been submitted to DEM.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.

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- (I) **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:** Copar and Westerly Granite have complete control over the operations occurring at the property. The operations at the property continue without a permit.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<b><u>X</u> MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		<b>TYPE I</b>	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250 <b>\$2,500</b>	\$1,250 to \$2,500	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Disposal of solid waste at other than a licensed solid waste management facility  
 VIOLATION NO.: D (3)

TYPE		
<p style="text-align: center;"><u>  X  </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Westerly Granite Co. Inc (Westerly Granite) disposed of or allowed for the disposal of solid waste on the property. Prohibiting the disposal of solid waste at other than a licensed solid waste management facility is of importance to the regulatory program. Proper management of solid waste is an essential part of protecting public health and safety and the environment.</p> <p>(B) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</p> <p>(C) <b>Amount of the pollutant:</b> The April 16, 2012 inspection revealed approximately 21 cubic yards of solid waste on the property.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Some of the solid waste is combustible and presents a fire hazard. Some of the solid waste materials may provide harborage to rodents or disease vectors.</p> <p>(E) <b>Duration of the violation:</b> Full duration unknown – at least 2 months. DEM first observed solid waste on the property on April 16, 2012.</p> <p>(F) <b>Areal extent of the violation:</b> Unknown.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Westerly Granite failed to prevent the non-compliance by prohibiting the disposal of solid waste on the property.
- (H) **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.
- (I) **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:** Westerly Granite, as owner of the property and the solid waste deposited thereon, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000		<b>TYPE I</b>	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250 <b>\$2,500</b>	\$1,250 to \$2,500	\$250 to \$1,250