

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

IN RE: John S. Dolinski

**FILE NO.: OCI-FW-16-130
X-Ref C09-0049**

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 party (“Respondent”) has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

On 1 June 2009, in response to a complaint received by DEM and an investigation of the complaint, DEM issued a Notice of Intent to Enforce (“NOIE”) to Respondent for some of the violations that are the subject of this Notice of Violation (“NOV”). The NOIE required Respondent to stop all activity on the site which has affected, or which could affect any and all wetlands, and to restore the affected wetlands. During an informal meeting with DEM, Respondent agreed to comply with the NOIE and complete the required wetland restoration during the fall of 2009. DEM received additional complaints in 2016 and 2018, which revealed new violations that are also the subject of the NOV. As of the date of the NOV, Respondent has not complied with the NOIE or addressed the new violations.

C. Facts

- (1) The properties are 205 Reservoir Road, Assessor’s Plat 210, Lot 28 (“Lot 28”), an island southwest of 205 Reservoir Road, Assessor’s Plat 209, Lot 33 (“Lot 33”) and Pascoag Reservoir (the “Pond”) in the Town of Burrillville, Rhode Island (collectively, the “Properties”).
- (2) Respondent owns Lot 28 and Lot 33.
- (3) The Seaconke Wampanoag Tribe and the Town of Burrillville own the Pond.
- (4) On 19 May 2008, DEM received a complaint regarding construction of new docks within the Pond and completion of other improvements in the areas around the Pond.
- (5) On 21 July 2008, in response to the complaint, DEM inspected the Properties. The inspection revealed the installation of several dock structures (extending generally north of the existing building to a peninsula) within the Pond. This activity resulted in the alteration of 180 linear feet of freshwater wetland.

- (6) On 18 July 2016 and 10 July 2018, DEM received complaints regarding construction of additional docks within the Pond.
- (7) On 20 July 2016 and 21 August 2018, in response to the complaints, DEM inspected the Properties. The inspections revealed the following:
 - (a) Installing approximately 40 fixed and floating docks and other structures (including at least “lighthouses”, boat lifts and a light post) within, filling (in the form of at least concrete, bricks and rocks) within, and withdrawing water from, the Pond. These activities have resulted in the alteration of approximately 5,750 square feet of freshwater wetland; and
 - (b) Clearing, maintaining for recreational use and storing boats and various debris within the 50-foot perimeter wetland associated with the Pond (the “Perimeter Wetland”). These activities have resulted in the alteration of approximately 5,000 square feet of freshwater wetland.
- (8) The activities described in subsections C (5) and C (7) above are not exempt in accordance with Part 1.6 of the Rhode Island Code of Regulations titled *Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act (250-RICR-150-15-1)* (the “Wetland Rules”).
- (9) Respondent did not receive a permit from DEM to alter the freshwater wetlands in the areas described in subsections C (5) and C (7) 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 Rules, Part 1.5(A) [formerly Rule 5.01]** – prohibiting activities which may alter freshwater wetlands without a permit from DEM.

E. Order

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

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

RESTORATION REQUIREMENTS

- (a) At the discretion and direction of DEM, install proper soil erosion and sediment control materials on the Properties, as deemed necessary, to protect all freshwater wetlands from erosion and sedimentation impacts. Any installed 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, and until such time that all areas of concern areas are properly stabilized.
- (b) Remove all components of unauthorized dock structures and accessories, along with “lighthouses”, boat lifts, water pump, rock and concrete walkway and patio, sheds, decks, walkways, light posts, and any other unauthorized materials from the Pond. All material that is removed must be deposited offsite in an appropriate upland location, outside of all freshwater wetlands. All work within the Pond must be performed during an acceptable low-water period (e.g., very late summer or early fall, or following the yearly Pond “draw-down” period).
- (c) Remove all unauthorized structures, boats, campsites, and fill materials (including but not limited to soil material, rocks, stones, boulders, storage materials, and various waste debris) from the Perimeter Wetland (on both mainland and island locations). DEM must perform a detailed inspection of the entire island Properties prior to the completion of this requirement to identify all the materials that must be removed. All material that is removed must be deposited offsite in an appropriate upland location, outside of all wetlands.
- (d) Following the complete removal of all unauthorized structures and fill materials, as applicable, plant all disturbed surface areas within the altered Perimeter Wetland, as directed by DEM, with trees and shrubs, as follows:

Balled and burlapped or transplanted tree species must be planted in interspersed fashion, 8 feet on center, 4 to 5 feet tall after planting, throughout the areas defined above. Tree species must include an equal distribution of at least 3 of the following selections:

White pine, *Pinus strobus*
Red maple, *Acer rubrum*
Northern red oak, *Quercus rubra*
White oak, *Quercus alba*
White ash, *Fraxinus americana*
Sassafras, *Sassafras albidum*
Sycamore, *Platanus occidentalis* (closer to Pond edges)
Gray Birch, *Betula populifolia*

Balled and burlapped or transplanted shrub species must be planted in interspersed fashion 5 feet on center, at least 3 feet tall after planting,

throughout the areas defined above. Shrub species must include an equal distribution of at least 4 of the following selections:

Mountain laurel, *Kalmia latifolia*
Giant rhododendron, *Rhododendron maximum* (shaded areas only)
Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*
Arrowwood (southern), *Viburnum dentatum*
American cranberrybush, *Viburnum trilobum*
Mapleleaf viburnum, *Viburnum acerifolium*
Inkberry, *Ilex glabra*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Sweet pepperbush, *Clethra alnifolia*
Bayberry, *Myrica pennsylvanica*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

- (e) Any of the required plantings failing to survive at least 2 full growing seasons from the time they have been planted must be replanted (with the same or similar species) and further replaced (as necessary) until such time that survival is maintained over 2 full growing seasons.
- (f) All disturbed surfaces within the Perimeter Wetland and the surrounding areas, resulting from the above restoration activities shall be covered with a suitable plantable soil (minimum 4 inches), seeded with a proper wildlife conservation grass seed mixture, and stabilized with a thick mat of loose straw mulch, which is free of any contaminants that may contain invasive plant seed material. Steeply sloping areas or denuded/disturbed areas to be left exposed for long periods of time must be covered with excelsior matting, jute mesh, or other acceptable (biodegradable) erosion control matting material.
- (g) All restored wetland areas, including replanted areas, must be left undisturbed in the future and allowed to revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other disturbances, alterations, or improvements are allowed within the restored wetland areas, or within any other freshwater wetlands on the Properties, without first obtaining a proper permit from DEM.
- (h) Upon stabilization of disturbed/restored surface areas, all artificial erosion and sedimentation controls (e.g., silt fences) must be removed from the freshwater wetlands. Staked haybales, spread straw mulch, and other naturally-based/bio-degradable erosion control measures may remain in place to decompose naturally. Prior to the removal of the controls and/or prior to any contractor vacating the Properties, all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.

- (i) All the restoration work outlined above must be completed on or before **31 August 2020**.
- (j) Contact DEM 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 a DEM agent.

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:

\$20,000

- (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, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program" 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 Respondent in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before 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, Suite 350
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **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 Town of Burrillville, Rhode Island to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 2-1-24, as amended.
 - (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Christina Hoefsmit of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David Chopy of DEM's 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

By: _____
David E. Chopy, Administrator
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

John S. Dolinski.
205 Reservoir Road
Burrillville, RI 02859

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: OCI-FW-16-130 X-Ref C09-0049

Respondent: John S. Dolinski

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) Alteration of Pond Without A Permit	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) and D (2) Alteration of Perimeter Wetland Without A Permit	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 Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

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: Alteration of Pond Without A Permit

VIOLATION NO.: D (1) and D (2)

TYPE		
<p><u> </u> X <u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <p>(1) The extent to which the act or failure to act was out of compliance: Respondent altered the Pond by installing approximately 40 fixed and floating docks and other structures (including at least "lighthouses", boat lifts and a light post) within, filling (in the form of at least concrete, bricks and rocks) within, and withdrawing water from, the Pond. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(2) Environmental conditions: Prior to the unauthorized alterations, the areas of Pond that have been altered were natural; unconsolidated rocky/cobbly/sandy underwater substrate with a thin layer of detritus on top – as are the surrounding natural Pond areas. Most of the natural shoreline is rocky and transitions to non-biological wetland almost immediately except for one area where there is some "fringe swamp" (immediately northeast of the rocky peninsula where boats and debris are being stored). The island area was not inspected but, based upon observations made from the docks attached to the mainland, the wetlands appear to have generally the same characteristics as the mainland.</p> <p>(3) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(5) Duration of the violation: Full duration unknown – at least approximately 11½ years. DEM first documented the violations on or about 21 July 2008 when DEM first inspected the Properties.</p> <p>(6) Areal extent of the violation: Approximately 5,750 square feet.</p>		
(continued)		

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent and/or mitigate the noncompliance. Respondent was issued the NOIE on 1 June 2009 for installing docks within the Pond. The NOIE required Respondent to stop all activity that affected, or which could affect, any and all wetlands, and to restore the Pond. Respondent did not comply with the NOIE and has continued to alter the Pond. Respondent has not applied for a permit from DEM.
- (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:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Properties and knowledge of the Wetland Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows DEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing. The installation of the docks resulted in numerous separate and distinct violations within the Pond, based upon the timeline of the dock installations. DEM could have assessed a maximum penalty of \$10,000 for each violation; however, DEM decided to combine the violations and assess a single penalty. Also, Respondent has enjoyed an economic benefit from the installation of the docks. Respondent charges for dock rentals at the rate of least \$600 per year per dock. DEM documented at least 40 unauthorized docks within the Pond. At \$600 per year, the annual income would total approximately \$24,000.

<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: Alteration of Perimeter Wetland Without A Permit

VIOLATION NO.: D (1) and D (2)

TYPE		
<p><u> </u> X <u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the 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: Clearing, maintaining for recreational use and storing boats and various debris within the Perimeter Wetland. The severity of the alterations to the wetland environment was determined to be of major importance to the regulatory program (2) Environmental conditions: Prior to the alterations that were made within the Perimeter Wetland, including those locations on the island, the areas of concern appear to have been vegetated and unused. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown – at least 3 ½ years. DEM first documented the violations on or about 20 July 2016 when DEM inspected the Properties. (6) Areal extent of the violation: Approximately 5,000 square feet. 		
(continued)		

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent and/or mitigate the noncompliance. Respondent was issued the NOIE on 1 June 2009 for installing docks within the Pond. The NOIE required Respondent to stop all activity that affected, or which could affect, any and all wetlands. Respondent altered the Perimeter Wetland after the NOIE was issued. Respondent has not applied a permit from DEM.
- (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:** Respondent had complete control over the project, and the violation was foreseeable. Respondent had knowledge that wetlands were present on the Properties and knowledge of the Wetland Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows the DEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing. The work undertaken in the Perimeter Wetland resulted in numerous separate and distinct violations, based upon the character of the work, the different (distinct) locations of the wetland features that were altered, and the timeline of the work. DEM could have assessed a maximum penalty of \$10,000 for each violation; however, DEM decided to combine the violations and assess a single penalty for all the violations.

<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