

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

**IN RE: C J Hakeem**

**FILE NO: FW C06-0139**

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

DEM issued informal written notices to the Respondent on August 28, 2006 and January 17, 2007 for the violation and spoke with the Respondent on October 18, 2007 about the violation. The Respondent has failed to comply with the DEM regulations.

C. Facts

- (1) The property is located at 336 Lakeshore Drive, Assessor's Plat 327, Lot 231 in the city of Warwick, Rhode Island (the "Property").
- (2) The Respondent owns the Property. The Respondent acquired the Property on December 5, 2005.
- (3) DEM inspected the Property on July 27, 2006. The inspection revealed filling (in the form of sand/gravel material), grading, clearing, and creating soil disturbance within the 50-foot Perimeter Wetland of Warwick Pond (the "Perimeter Wetland"). This activity resulted in the unauthorized alteration of at least 1,700 square feet of the Perimeter Wetland.
- (4) DEM inspected the Property on May 31, 2007, October 18, 2007, May 21, 2008, and August 2, 2010. The inspections revealed that the Respondent continues to maintain a lawn in the Perimeter Wetland.
- (5) The Respondent did not receive approval from the DEM to alter the Perimeter Wetland.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes, regulations, and/or other requirements:

- (1) **R.I. General Laws Section 2-1-21** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (2) **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.

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 cease and desist **IMMEDIATELY** from any further unauthorized alteration of the above described freshwater wetlands.

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:

**Two-Thousand Five-Hundred Dollars (\$2,500.00)**

- (2) The proposed administrative penalty is calculated pursuant to DEM’s Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty days of your receipt of this Notice of Violation (“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 the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the respondent 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.

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 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  
235 Promenade Street, 3<sup>RD</sup> Floor  
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 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:

Joseph J. LoBianco, Esq.  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908

(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 city of Warwick wherein the Property is located to be recorded in the Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 2-1-24, 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) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Mr. Harold Ellis of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7401.

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

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

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

### CERTIFICATION

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

**C J Hakeem**  
**336 Lakeshore Drive**  
**Warwick, RI 02889**

by Certified Mail.





## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C06-0139

Respondent: C J Hakeem

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 (2) – Alteration of Perimeter Wetland	Type I (\$10,000 Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500.00
<b>SUB-TOTAL</b>					<b>\$2,500.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$2,500.00**

# PENALTY MATRIX WORKSHEET

CITATION: Alteration of Perimeter Wetland  
 VIOLATION NO.: D (1) and (2)

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.		
<p><b>FACTORS CONSIDERED:</b>            Taken from Section 10(a)(2) of the DEM Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) <b>The extent to which the act or failure to act is out of compliance:</b> The Respondent is maintaining a lawn in Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> The Perimeter Wetland is associated with Warwick Pond, which in this area is relatively undisturbed and natural. A small part of Perimeter Wetland was replanted, but the area has not been left to revegetate to a natural wild condition.</p> <p>(C) <b>Amount of the pollutant:</b> Not relevant</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Not relevant</p> <p>(E) <b>The duration of the violation.</b> The violation was first observed by DEM on July 27, 2006.</p> <p>(F) <b>The areal extent of the violation:</b> The areal extent of the violation is approximately 1,700 ft<sup>2</sup>.</p> <p>(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> Respondent failed to obtain the appropriate permit from DEM. DEM issued a Notice of Intent to Enforce (NIE) to the Respondent on August 28, 2006 and a Letter of Noncompliance (LNC) on January 17, 2007 requiring restoration of the wetlands. The DEM inspector verbally advised the Respondent on October 18, 2007 to cease mowing the lawn. The Respondent has failed to comply with the written or verbal notices.</p> <p>(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> Not relevant.</p> <p>(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 Respondent had complete control over the occurrence of the violation and had an obligation to protect the wetlands on the Property. Respondent continues to maintain the wetland in an altered condition.</p> <p>(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Not relevant.</p>		
MAJOR	<u>X</u> 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	\$2,500 to \$5,000	\$1,000 to \$2,500
	<b>MODERATE</b>	\$2,500 to \$5,000 <b>\$2,500</b>	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500