

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

**IN RE:   Deborah Johnson  
          Baird Properties LLC**

**FILE NO.: FW C10-238**

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 November 26, 2001 DEM issued a written warning notice to Deborah Johnson for undertaking activity adjacent to the freshwater wetland that is the subject of this notice of violation. On March 1, 2002 a written cease and desist order was issued to Daryl Johnson for altering the wetland. On December 20, 2010 DEM spoke with the consultant for Baird Properties LLC regarding the work that was required to resolve the violation that is the subject of this notice of violation. The Respondents have failed to fully resolve the violation.

C.    Facts

- (1)    The property is located at 33 Money Hill Road, Assessor's Plat 10A, Lot 30 in the town of Glocester, Rhode Island (the “Property”).
- (2)    Deborah Johnson owns the Property.
- (3)    DEM inspected the Property on November 16, 2010 and December 20, 2010. The inspections revealed filling (in the form of at least soil material) within an Emergent Plant Community (the “EPC”). This activity has resulted in the unauthorized alteration of approximately 4,700 square feet of freshwater wetland.
- (4)    DEM received a plan to restore the EPC dated November 2010 that was submitted by Natural Resources Services on behalf Baird Properties LLC.
- (5)    The Respondents did not receive approval from DEM to alter the freshwater wetlands on the Property in the area specified 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 the DEM.
- (2) DEM Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (effective June 1, 2007), 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:

- (1) Cease and desist **IMMEDIATELY** 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**

- (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 EPC. 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 representatives 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 remaining unauthorized fill material from the EPC. All unauthorized fill material must be removed down to the grade that existed prior to filling. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
- (c) All slopes resulting from fill removal operations must be graded to a maximum 3:1 slope, with the top of the slope matching the existing surrounding undisturbed areas.

- (d) Following fill removal operations a wetland seed mix (containing seed similar to the vegetation that was removed) must be applied to the surface areas of the restored EPC, a wildlife conservation seed mix must be applied to any adjacent re-established side slopes, and all disturbed surface areas must be covered with a mat of spread hay mulch.
  - (e) If any or all of the stabilizing vegetation fails to survive at least two (2) years from the time that planting has been verified by DEM, the area shall be reseeded and maintained until such time that survival is maintained over two (2) full years.
  - (f) All restored wetland areas must be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, grading, filling or other alterations are allowed in the restored wetland areas, or within other freshwater wetlands on the subject property, without first obtaining a permit from DEM.
  - (g) 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.
  - (h) The above restoration work shall be completed prior to **July 31, 2011**.
- (3) 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 a representative of DEM.

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:

**Three-Thousand Two-Hundred Fifty Dollars (\$3,250.00)**

- (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 Director within twenty (20) 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 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.

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  
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, 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 Glocester 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) 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 \_\_\_\_\_ 2011  
the within Notice of Violation was forwarded to:

Deborah Johnson  
P.O. Box 264  
Pascoag, RI 02859-0264

Baird Properties, LLC  
c/o Fred J. Volpe, Esq., Registered Agent  
130 Tower Hill Road  
P.O. Box 444  
North Kingstown, RI 02852

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C10-238

Respondents: Deborah Johnson and Baird Properties 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 (2) – Alteration of Emergent Plant Community	Type I (\$5,000 Max. Penalty)*	Major	\$3,250	1 violation	\$3,250.00
<b>SUB-TOTAL</b>					<b>\$3,250.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$3,250.00**

# PENALTY MATRIX WORKSHEET

CITATION: Alteration of an Emergent Plant Community  
 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.
<b>DEVIATION FROM THE STANDARD</b> 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> The Respondents altered a wetland by filling (in the form of at least soil material) within an Emergent Plant Community (EPC). 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 EPC was previously undisturbed throughout the altered area. Given the relatively small size of the wetland, approximately 2/5 of the entire EPC was cleared and filled. A portion of the fill has been removed from the wetland but the restoration is not complete.				
(C) <b>Amount of the pollutant:</b> Not relevant				
(D) <b>Toxicity or nature of the pollutant:</b> Not relevant				
(E) <b>The duration of the violation:</b> Unknown. The unauthorized alteration was first observed by DEM on November 16, 2010.				
(F) <b>The areal extent of the violation:</b> The aerial extent of the violation is 4,700 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> Not Relevant.				
(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 occurrence of the violation and had an obligation to protect the wetlands on the property.				
(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Not relevant.				
<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>\$3,250</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