

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

**IN RE: John Reis
Lisa Reis**

FILE NO.: FW C12-0079

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 (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) The property is located at 90 Zachariah Place, Assessor's Plat 328, Lot 475 in the city of Warwick, Rhode Island (the “Property”).
- (2) The Respondents own the Property.
- (3) DEM inspected the Property on June 14, 2012. The inspection revealed clearing, filling (in the form of at least beach sand, patio furniture and assorted property accessories), the construction of a patio, and shed installation within the Perimeter Wetland of Warwick Pond. These activities have resulted in the unauthorized alteration of approximately 1,000 square feet of freshwater wetland.
- (4) The Respondents did not receive approval to alter the freshwater wetlands on the Property in the area specified above.

C. 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’s Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Rule 7.01** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.

D. 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 existing disturbed surfaces/areas to be restored and the adjacent undisturbed freshwater wetlands. The 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 of the surrounding areas are properly stabilized.
- (b) Remove all unauthorized fill material (including, but not limited to, the beach sand, the shed, the patio, patio furniture, and other associated property amenities) from the Perimeter Wetland. All fill material and property amenities that are removed shall be deposited in an appropriate upland location, outside of any and all wetlands.
- (c) Plant trees and shrubs in all unauthorized cleared/altered portions of the Perimeter Wetland as follows:

Balled and burlapped or transplanted tree species shall be planted in an interspersed fashion, ten (10) feet on center, four (4) feet tall after planting, throughout the areas defined above. Tree species shall include an equal distribution of at least one (1) of the following selections:

White pine, *Pinus strobus*
Northern white cedar, *Thuja occidentalis*
Red maple, *Acer rubrum*
White oak, *Quercus alba*

Balled and burlapped or transplanted shrub species shall be planted in an interspersed fashion four (4) feet on center, three (3) feet tall after planting, throughout the area defined above. Shrub species shall include an equal distribution of at least two (2) of the following selections:

Mountain laurel, *Kalmia latifolia*
Red osier dogwood, *Cornus stolonifera*
Giant rhododendron, *Rhododendron maximum* (shaded areas only)
Arrowwood (southern), *Viburnum dentatum*

Winterberry, *Ilex verticillata*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Spice bush, *Lindera benzoin*
Sweet pepperbush, *Clethra alnifolia*

- (d) If any or all of the required plantings fail to survive at least one (1) full year from the time the plantings have been verified by DEM, the same plant species shall be replanted and maintained until such time that survival occurs over one (1) full year.
 - (e) All areas of disturbed surface soils shall be loamed (if necessary), seeded with a wetland seed mix or wildlife conservation grass seed mixture (as specified above), 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 lieu of the above stabilization measures. Steeply sloping areas shall be covered with excelsior matting or jute mesh.
 - (f) All restored wetland areas, including replanted areas, shall 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 the DEM.
 - (g) Upon stabilization of all disturbed areas all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) shall be removed from the freshwater wetland. 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 all accumulated sediment shall be removed to a suitable upland area and all disturbed surfaces shall be stabilized as described above.
 - (h) The above restoration work shall be completed prior to **October 31, 2012**.
- (3) Contact Ms. Shawna Smith at DEM (401) 222-1360 ext. 7249 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.

E. 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 **Error! Reference source not found.** 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, 2ND 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:

Joseph J. LoBianco, 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 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 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 Ms. Shawna Smith or Mr. Harold Ellis of the DEM Office of Compliance and Inspection at (401) 222-1360 exts. 7249 and 7401, respectively.

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 E 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:

John Reis
90 Zachariah Place
Warwick, RI 02889

Lisa Reis
90 Zachariah Place
Warwick, RI 02889

by Certified Mail.
