

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

IN RE: Kenneth R. Stillson

**FILE NO.: OCI-FW-16-46
X-Ref. File No. C00-0388**

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 16 September 2016, the DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the violations. On 4 October 2016, the DEM received a letter from Respondent’s attorney in response to the NIE. The letter stated that Respondent believes he is not in violation of the DEM’s regulations and requested a meeting with the DEM to discuss the matter further. The DEM’s efforts to schedule a meeting were unsuccessful. To date, Respondent has not complied with the NIE.

C. Facts

- (1) The properties are located approximately 250 feet northeast of the southern terminus of Wilbur Avenue, to the rear (east and northeast) of house number 172, approximately 400 feet south/southeast of its intersection with Wells Avenue, Assessor’s Plat 327, Lot 280 and Lot 282, in the city of Warwick (the “Properties”).
- (2) Nancy M. Pace and Justin Pace own Lot 280.
- (3) Respondent owns Lot 282.
- (4) On 21 April 2016, 26 July 2016, and 17 May 2017, the DEM inspected the Properties. The inspections revealed the following :
 - (a) Clearing, stumping/grubbing, filling (in the form of at least soil material, concrete blocks, and cut tree debris/waste), grading, and creating surface disturbance within Perimeter Wetland to construct a gravel road and a concrete block retaining wall. These activities resulted in the alteration of approximately 4,500 square feet of freshwater wetland, of which

approximately 3,250 square feet was on Lot 282 and approximately 1,250 square feet was on Lot 280; and

- (b) Clearing, filling (in the form of at least soil material) and creating surface disturbance within a Swamp. These activities have taken place entirely on Lot 282 and resulted in the alteration of approximately 500 square feet of freshwater wetland.
- (5) Respondent did not receive approval from the DEM to alter freshwater wetlands on the Properties.

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’s Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (the “Freshwater Wetland Regulations”), Rule 5.01** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.

E. Order

Based upon the violations alleged above, the following actions are required for you to comply with the above-referenced statutes or regulations:

- (1) **IMMEDIATELY** cease any further alterations of freshwater wetlands.
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.
 - (a) Install a continuous uninterrupted line of staked haybales or biodegradable fiber logs along the outside (eastern) edge of the unauthorized fill material, between the toe of the slope of the fill and the adjacent undisturbed wetlands. These 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 activities, and until such time that all of the surrounding areas are properly stabilized. At the discretion and direction of the DEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.

- (b) Remove the unauthorized fill material (that is, at least soil material, concrete block wall components, fencing, and cut tree debris/waste) from the Swamp and Perimeter Wetland, back to the limits of disturbance authorized under DEM File No. C00-388. Fill must be removed down to original grade to match the surface elevations of the undisturbed surrounding areas. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all freshwater wetlands.
- (c) Following the removal of the fill material, all disturbed surface areas within the restored Swamp must be seeded with an appropriate wetland seed mixture. All disturbed surface areas within the restored Perimeter Wetland must be covered with plantable soil (4 inches minimum), as needed, and seeded with the wildlife conservation seed mixture. A thick mat of straw mulch, which is free of any contaminants that could promote the spread of invasive plant species, must also be applied over all disturbed surfaces to provide stabilization.
- (d) Plant the restored Perimeter Wetland with trees and shrubs, as follows:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, 4 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*
- Northern white cedar, *Thuja occidentalis*
- Red maple, *Acer rubrum*
- Box elder (ashleaf maple), *Acer negundo*
- White ash, *Fraxinus americana*
- White oak, *Quercus alba*
- Northern red oak, *Quercus rubra*
- Sassafras, *Sassafras albidum*
- Gray birch, *Betula populifolia*
- Black birch, *Betula lenta*
- American beech, *Fagus grandifolia*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion 5 feet on center, 3 feet tall after planting, throughout the area 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*
- Silky dogwood, *Cornus amomum*

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*

In addition, balled and burlapped or transplanted evergreen screening tree species must be planted in a straight line, 8 feet on-center (apart), 5 feet to 6 feet tall after planting, along the outer (landward) edge of the restored Perimeter Wetland. The tree species to be utilized for this screening line must be chosen from the following selections:

Northern white cedar (Eastern arborvitae), *Thuja occidentalis*
White pine, *Pinus strobus*
White spruce, *Picea glauca*

- (3) If any or all of the required plantings fail to survive at least 1 full year from the time they have been planted, you shall be responsible for replanting and maintaining the same plant species until such time that survival is maintained over 1 full year.
- (4) All disturbed surfaces must be properly seeded (as described above) and stabilized with a mat of loose straw mulch. If necessary, very steep or extremely unstable surfaces must be covered with an appropriate erosion control matting of some type (for example, excelsior matting or jute mesh).
- (5) Upon stabilization of all disturbed areas, all non-biodegradable erosion and sediment controls must be removed from the freshwater wetland. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area, outside of any and all freshwater wetlands.
- (6) All restored freshwater wetland areas must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations or improvements are authorized in any wetland area on the Properties without first obtaining a valid permit from the DEM, unless the activities are exempt as defined in the DEM's Freshwater Wetlands Regulations.
- (7) The above described restoration work must be completed by **30 September 2017**.

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:

\$12,500

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 20 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashiers 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 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 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 the 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
One Capitol Hill, 4TH 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's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

- (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 the 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 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 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) 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 at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Ms. Katherine Morgan or Mr. Stephen Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-4700 extensions 7255 and 7406, 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 G above.

FOR THE DIRECTOR

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

Dated: _____

CERTIFICATION

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

Kenneth R. Stillson
172 Wilbur Avenue
Warwick, RI 02889

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS
 File No.: OCI-FW-16-46 X-Ref. File No. C00-0388
 Respondent: Kenneth R. Stillson

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 Perimeter Wetland	Type I (\$10,000 Max. Penalty)*	Major	\$10,000	1 violation	\$10,000
D(1) and D(2) – Alteration Of Swamp	Type I (\$10,000 Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$12,500

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE
<p>COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.
<p>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.</p>

COST RECOVERY
<p>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.</p>
<p>A review of the record in this matter has revealed that the 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.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$12,500

PENALTY MATRIX WORKSHEET

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

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent altered freshwater wetlands by clearing, stumping/grubbing, filling (in the form of at least soil material, concrete blocks, and cut tree debris/waste), grading, and creating surface disturbance within a Perimeter Wetland to construct a gravel road and a concrete block retaining wall. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Perimeter Wetland was undisturbed prior to the unauthorized alteration with the exception of previous unauthorized alterations completed by Respondent that were resolved through a DEM wetland enforcement action (File No. C00-0388).</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 1 year. The DEM first documented the violation on 21 April 2016.</p> <p>(F) Areal extent of the violation: 4,500 square feet.</p>		
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- (G) **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 the noncompliance. Respondent was previously issued an enforcement action (File No. C00-0388) by the DEM for filling in the same wetland. Respondent, after resolving the previous enforcement action, re-altered the wetland in a similar manner without a permit from the DEM. Respondent has not taken reasonable and appropriate steps to mitigate the noncompliance. Respondent failed to comply with the NIE, which required that he restore the wetland by 31 October 2016.
- (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:** Respondent was previously cited (C00-0388) in calendar year 2000 by the DEM for altering the same wetland.
- (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:** Respondent had complete control over the project, knowledge of the type and location of the wetland on the Properties and had an obligation to protect the wetland.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> MAJOR	MODERATE	MINOR
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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 Swamp
 VIOLATION NO.: D (1) and (2)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <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's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent altered freshwater wetland by clearing, filling (in the form of at least soil material) and creating surface disturbance within a Swamp. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.
- (B) **Environmental conditions:** The Swamp was undisturbed prior to the unauthorized alteration with the exception of previous unauthorized alterations completed by Respondent that were resolved through a DEM wetland enforcement action (File No. C00-0388).
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Full duration unknown – at least 1 year. The DEM first documented the violation on 21 April 2016.
- (F) **Areal extent of the violation:** 500 square feet.

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- (G) **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 the noncompliance. Respondent was previously issued an enforcement action (File No. C00-0388) by the DEM for filling in the same wetland. Respondent, after resolving the previous enforcement action, re-altered the wetland in a similar manner without a permit from the DEM. Respondent has not taken reasonable and appropriate steps to mitigate the noncompliance. Respondent failed to comply with the NIE, which required that he restore the wetland by 31 October 2016.
- (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:** Respondent was previously cited (C00-0388) in calendar year 2000 by the DEM for altering the same wetland.
- (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:** Respondent had complete control over the project, knowledge of the type and location of the wetland on the Properties and had an obligation to protect the wetland.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> MODERATE	MINOR
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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
	MODERATE	\$2,500 to \$5,000 \$2,500	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500