

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

**IN RE: Robert Studley Jr.  
Gary Studley**

**FILE NO.: FW C10-161**

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 the jurisdiction of DEM.

B. Administrative History

The DEM issued an informal written notice to the Respondents on September 19, 2011 for the violations. The notice required specific actions to correct the violations. On October 12, 2011 the DEM received a letter in response to the notice. The letter stated that it was the Respondents’ intent to comply with the notice. To date, the Respondents have failed to comply with the notice.

C. Facts

- (1) The property is located at 193 Weaver Hill Road in the town of West Greenwich, Rhode Island, approximately 670 feet north of Weaver Hill Road, approximately 950 feet northwest of the intersection of Weaver Hill Road and Rice Trail, and identified as Assessor’s Plat 8, Lot 7-1, in the town of West Greenwich, Rhode Island (the “Property”).
- (2) The Respondents own the Property.
- (3) DEM inspected the Property on August 17, 2010. The inspection revealed the following unauthorized alterations of freshwater wetlands:
  - (a) Clearing, excavating, and filling (in the form of at least soil material) within Swamp. This activity has resulted in the unauthorized alteration of approximately 65,000 square feet of wetland.
  - (b) Clearing, excavating, and filling (in the form of at least soil material) within Perimeter Wetland. This activity has resulted in the unauthorized alteration of approximately 20,000 square feet of wetland.

- (4) The Respondents did not receive approval from DEM to alter the freshwater wetlands on the Property in the areas 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's Rules and Regulations 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:

- (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 freshwater wetlands. 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 DEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
- (b) Restore the Swamp to its original unaltered condition. All unauthorized fill material shall be removed down to the original surface grade of the Swamp, matching the grade of the surrounding undisturbed wetlands. In all areas where an adequate organic soil substrate is not present (i.e., where it has been removed), remove an additional 8 inches of soil material from the excavated area, then backfill with the original hydric soil that was removed from the Swamp or, if the original hydric soil is no longer present, place a minimum 8 inches of high-organic plantable soil to re-

establish the proper elevation and hydrologic regime. A wetland seed mix shall be applied to the surface areas of the restored Swamp and a wildlife conservation seed mix shall be applied to any re-established side slopes at the restoration site. A mat of spread hay mulch shall be applied over all disturbed surface areas.

- (c) All disturbed surface soils in the Perimeter Wetland shall be loamed (if necessary), seeded with a wildlife conservation grass seed mixture, 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 appropriate areas in lieu of the above stabilization measures. If necessary, steeply sloping areas or denuded/disturbed areas to be left exposed for long periods of time must be covered with excelsior matting or jute mesh.
- (d) All areas that were cleared in the Perimeter Wetland must be replanted with trees and shrubs as required below:

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 4 of the following selections:

White pine, *Pinus strobus*  
Northern white cedar, *Thuja occidentalis*  
Red maple, *Acer rubrum*  
Box elder, *Acer negundo*  
Black cherry, *Prunus serotina*  
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 6 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*  
Highbush blueberry, *Vaccinium corymbosum*  
Lowbush blueberry, *Vaccinium angustifolium*  
Sweet pepperbush, *Clethra alnifolia*  
Bayberry, *Myrica pennsylvanica*  
Black chokeberry, *Aronia melanocarpa*  
Witchhazel, *Hamamelis virginiana*

- (e) If any or all of the required plantings fail to survive at least 2 years from the time that planting has been verified by DEM, the same plant species shall be replanted and maintained until such time that survival is maintained over 2 full years.
  - (f) All restored wetland areas, including replanted areas, must 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 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 **May 31, 2012**.
- (4) 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 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:

**Eight-Thousand Dollars (\$8,000.00)**

- (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 20 days of your receipt of this Notice of Violation (“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 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 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, 2<sup>nd</sup> 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:

Richard M. Bianculli Jr., 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 West Greenwich 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) Richard M. Bianculli, Jr. at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Mr. Howard Cook or Mr. Harold Ellis of the DEM Office of Compliance and Inspection at (401) 222-1360 exts. 7161 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 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:

Robert Studley Jr.  
c/o Helen Studley  
175 Weaver Hill Road  
West Greenwich, RI 02817

Gary Studley  
c/o Helen Studley  
175 Weaver Hill Road  
West Greenwich, RI 02817

by Certified Mail.

\_\_\_\_\_



# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C10-0161

Respondents: Robert Studley and Gary Studley

<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 Swamp	Type I (\$5,000 Max. Penalty)*	Major	\$5,000	1 violation	\$5,000.00
D(1) and (2) – Alteration of Perimeter Wetland	Type I (\$5,000 Max. Penalty)*	Major	\$3,000	1 violation	\$3,000.00
<b>SUB-TOTAL</b>					<b>\$8,000.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$8,000.00**



# PENALTY MATRIX WORKSHEET

Citation: Alteration of Swamp  
 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.				
<b>FACTORS CONSIDERED:</b> Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i>				
(A) <b>The extent to which the act or failure to act is out of compliance:</b> The Respondents altered a wetland by clearing, excavating, and filling (in the form of at least soil material) within Swamp. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.				
(B) <b>Environmental conditions:</b> The Swamp was previously forested throughout the cleared, excavated and filled area.				
(C) <b>Amount of the pollutant:</b> Not utilized for this calculation.				
(D) <b>Toxicity or nature of the pollutant:</b> Not utilized for this calculation.				
(E) <b>The duration of the violation:</b> Unknown. At least 1 ½ years. The unauthorized alteration was first identified by the DEM on August 17, 2010.				
(F) <b>The areal extent of the violation:</b> The aerial extent of the violation is approximately 65,000 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 and failed to comply with a Notice of Intent to Enforce issued by DEM to the Respondents on September 19, 2011.				
(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 utilized for this calculation.				
(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 project 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 utilized for this calculation.				
<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>\$5,000</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

# 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.				
<b>FACTORS CONSIDERED:</b>				
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 clearing, excavating, and filling (in the form of at least soil material) within Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.				
(B) <b>Environmental conditions:</b> The Perimeter Wetland was previously forested throughout the cleared, excavated and filled area.				
(C) <b>Amount of the pollutant:</b> Not utilized for this calculation.				
(D) <b>Toxicity or nature of the pollutant:</b> Not utilized for this calculation.				
(E) <b>The duration of the violation:</b> Unknown. At least 1 ½ years. The unauthorized alteration was first identified by the DEM on August 17, 2010.				
(F) <b>The areal extent of the violation:</b> The aerial extent of the violation is approximately 20,000 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 and failed to comply with a Notice of Intent to Enforce issued by DEM to the Respondents on September 19, 2011.				
(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 utilized for this calculation.				
(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 project 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 utilized for this calculation.				
<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>\$3,000</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