

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

**IN RE: Salvador J. Vargas  
Amelia Vargas**

**FILE NO.: C11-0076**

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 September 29, 2008 and July 6, 2011 the DEM met with Salvador Vargas to discuss the violations. Mr. Vargas stated that he intended to correct the violations. On January 25, 2012 and February 6, 2013 the DEM issued informal written notices for the violations. The notices required specific actions to correct the violations. To date, the Respondents have failed to comply with the notices. On September 6, 2013 the DEM issued a letter to the owners of one lot that is the subject of this notice. The letter requested that the owners advise the DEM if they intended to correct the violations. The owners failed to respond to the letter.

C. Facts

- (1) The property is located approximately 300 feet south of Rockland Road, adjacent to house number 356, approximately 2,100 feet southwest of the intersection of Rockland Road and Central Pike, Assessor's Plat 41, Lots 29 and 36 in the town of Scituate, Rhode Island (the "Property").
- (2) Michael Burr and Donna Burr currently own Plat 41, Lot 29. Salvador Vargas and Amelia Vargas owned the lot at the time of the unauthorized alterations of freshwater wetlands.
- (3) The Respondents own Plat 41, Lot 36.
- (4) Inspections of the Property by DEM on September 29, 2008 and July 6, 2011 revealed the following:
  - (a) Clearing, filling (in the form of at least soil material, slash and assorted debris) and creating soil disturbance within Swamp. This activity has resulted in the unauthorized alteration of approximately 45,000 square feet of freshwater wetland.

- (b) Clearing, filling (in the form of at least soil material, vegetation, and assorted debris) and creating soil disturbance within Perimeter Wetland. This activity has resulted in the unauthorized alteration of approximately 30,000 square feet of freshwater wetland.
- (5) 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 DEM.
- (2) **DEM’s 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 unauthorized 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 those portions of the wetlands that have been altered without authorization and the undisturbed adjacent 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, 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 to protect any and all freshwater wetlands.

- (b) Remove all unauthorized fill material from the Swamp and Perimeter Wetland. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
- (c) Following completion of the removal work, all unauthorized cleared and altered areas within the Perimeter Wetland must be planted with trees and shrubs.

Balled and burlapped or transplanted tree species must be planted in a straight line, 10 feet on center, 4 feet tall after planting, along the outer edge of the Perimeter Wetland. Tree species must include an equal distribution of at least 2 of the following selections:

White pine, *Pinus strobus*  
Red cedar, *Juniperus virginiana*  
White oak, *Quercus alba*  
Pin oak, *Quercus palustris*  
Gray Birch, *Betula populifolia*

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 12 feet on center, 4 feet tall after planting, throughout the unauthorized cleared and altered areas within the Perimeter Wetland. Tree species must include an equal distribution of at least 3 of the following selections:

White pine, *Pinus strobus*  
Red cedar, *Juniperus virginiana*  
Northern red oak, *Quercus rubra*  
White oak, *Quercus alba*  
Pin oak, *Quercus palustris*  
Gray Birch, *Betula populifolia*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, 15 feet on center, 3 feet tall after planting, throughout the unauthorized cleared and altered areas within the Perimeter Wetland. Shrub species must include an equal distribution of at least 3 of the following selections:

Mountain laurel, *Kalmia latifolia*  
Giant rhododendron, *Rhododendron maximum*  
Arrowwood, *Viburnum dentatum*  
Wild raisin, *Viburnum cassinoides*  
Winterberry, *Ilex verticillata*  
Highbush blueberry, *Vaccinium corymbosum*  
Lowbush blueberry, *Vaccinium angustifolium*  
Witchhazel, *Hamamelis virginiana*

- (d) 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.
  - (e) All disturbed surfaces within the Swamp must be seeded with a wetland wildlife conservation grass seed mixture, and stabilized with a mat of loose hay mulch. All disturbed surfaces outside of the Swamp must be covered with plantable soil/loam (if necessary), seeded with a wildlife conservation grass seed mixture, and stabilized with a mat of loose hay mulch.
  - (f) Upon stabilization of all disturbed areas, erosion and sedimentation 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.
  - (g) All restored freshwater wetland areas, including replanted areas, must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations are authorized in any wetland area on the subject property without first obtaining a valid permit from DEM.
  - (h) The above restoration work must be completed before **May 1, 2014**.
- (3) Contact Mr. Bruce Ahern or Mr. Harold Ellis at DEM (401) 222-4700 ext. 7703 and 7401, respectively, prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No restoration 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:

**Nine Thousand Dollars (\$9,000.00)**

- (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 Director within 30 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 (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, 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 Scituate 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) Richard Bianculli 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:

Salvador J. Vargas  
356 Rockland Road  
Scituate, RI 02857

Amelia Vargas  
356 Rockland Road  
Scituate, RI 02857

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: C11-0076

Respondents: Salvador and Amelia Vargas

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 Swamp	Type I (\$5,000 Max. Penalty)*	Major	\$5,000	1 violation	\$5,000.00
D(1) and D(2) – Alteration of Perimeter Wetland	Type I (\$5,000 Max. Penalty)*	Major	\$4,000	1 violation	\$4,000.00
<b>SUB-TOTAL</b>					<b>\$9,000.00</b>

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

## ECONOMIC BENEFIT FROM NONCOMPLIANCE

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:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that the Respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted can not be quantified.

## COST RECOVERY

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.

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.

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 9,000.00**



# PENALTY MATRIX WORKSHEET

CITATION: *Alteration of Swamp*

VIOLATION NO.: D (1) and (2)

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

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondents cleared, filled (in the form of at least soil material, slash and assorted debris) and created soil disturbance within a Swamp. The severity of the alteration to the wetland environment was determined to be of major significance to the regulatory program.
- (B) **Environmental conditions:** The wetlands were in a natural wild condition (i.e., vegetated with trees and shrubs) prior to the alteration.
- (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:** DEM first observed this violation on September 29, 2008.
- (F) **Areal extent of the violation:** The areal extent of the violation is at least 45,000 square feet.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to apply for a permit from DEM requesting approval to alter the freshwater wetlands. Despite the issuance of written notices by DEM requiring restoration of the altered freshwater wetlands, the Respondents have not restored the freshwater wetlands.
- (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:** Considered, but not utilized for this calculation.
- (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:** The Respondents had complete control over the project and had an obligation to first gain approval for work within freshwater wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but 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		<b>TYPE I</b>	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$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> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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 *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondents cleared, filled (in the form of at least soil material, slash, and assorted debris), and created soil disturbance within Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of major significance to the regulatory program.
- (B) **Environmental conditions:** The wetlands were in a natural wild condition (i.e., vegetated with trees and shrubs) prior to the alteration.
- (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:** DEM first observed this violation on September 29, 2008.
- (F) **Areal extent of the violation:** The areal extent of the violation is at least 30,000 square feet.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to apply for a permit from DEM requesting approval to alter the freshwater wetlands. Despite the issuance of written notices by DEM requiring restoration of the altered freshwater wetlands, the Respondents have not restored the freshwater wetlands.
- (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:** Considered, but not utilized for this calculation.
- (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:** The Respondents had complete control over the project and had an obligation to first gain approval for work within freshwater wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but 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	<b>MAJOR</b>	\$2,500 to \$5,000 <b>\$4,000</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