

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Wesco Realty, LLC
WESCO OIL COMPANY**

FILE NO.: OCI-FW-16-119

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 DEM's jurisdiction.

B. Facts

- (1) The property is located at 307 Farnum Pike in the town of Smithfield, Rhode Island (the "Property").
- (2) Wesco Realty, LLC owns the Property.
- (3) WESCO OIL COMPANY ("WESCO") operates an oil distribution and water distribution business at the Property.
- (4) The Woonosquatucket River (the "River") is located immediately south of the Property.
- (5) On 2 September 2015, the DEM received electronic correspondence from Kevin Cleary, the town engineer for Smithfield. Mr. Cleary stated the following:
 - (a) WESCO has been making water surface withdrawals from the River with tanker trucks;
 - (b) There are dozens and dozens of these trucks leaving the Property each day;
 - (c) The trucks have been leaving the Property for the last couple of weeks;
 - (d) Each tanker truck had the capacity to hold about 8,000 gallons; and
 - (e) The tanker trucks were headed in the direction of a location on Route 102 in the town of Burrillville that is used to store water (the "Route 102 Facility") that is supplied to the Ocean State Power Facility.

- (6) On 29 July 2016 and 1 August 2016, the DEM received complaints that WESCO was transporting water withdrawn from the River to the Route 102 Facility.
- (7) On 1 August 2016, the DEM inspector spoke with Chad Sirois, the president of WESCO. Mr. Sirois stated that his company was not working in any freshwater wetlands and that there is a well on the Property and water is being withdrawn from that well.
- (8) On 1 August 2016, the DEM received electronic correspondence from Kevin Cleary, the town engineer for Smithfield. Mr. Cleary stated the following:
 - (a) On 28 July 2016, he observed about 4 tanker trucks per hour with the name WESCO WATER departing from the Property for about 10 hours;
 - (b) On 29 July 2016, he observed tanker trucks with the name WESCO WATER departing from the Property and estimated that the water withdrawal was about ½ the volume from the day before;
 - (c) Each tanker truck had the capacity to hold about 8,000 gallons; and
 - (d) The tanker trucks were headed in the direction of the Route 102 Facility.
- (9) On 4 August 2016, the DEM attempted to inspect the Property. The inspectors were advised that Mr. Sirois would need to consent to the inspection.
- (10) On 26 September 2016, the DEM received electronic correspondence from the Department of Health (the “DOH”) in response to the DEM’s inquiry regarding the installation of any wells on the Property. The DOH stated that it has no record of any wells located on the Property.
- (11) On 28 September 2016, the DEM spoke with Mr. Sirois regarding the water withdrawal. Mr. Sirois stated that:
 - (a) His company does not withdraw water from the River and he knows better than to do that; and
 - (b) There are two 500 foot drilled wells that were installed on the Property last year that are used to withdraw the water.The DEM requested that Mr. Sirois provide the paperwork on the well installations. Mr. Sirois stated that he would look for the paperwork and send it to the DEM.
- (12) On 27 October 2016, the DEM inspected the Property. The DEM inspector was told by WESCO’s employee that Mr. Sirois was not able to make the meeting scheduled for that day but that he would show the inspector the location of the wells. The employee also stated that he was not provided any paperwork from Mr. Sirois regarding the wells. The inspection revealed the following:
 - (a) There are two wells on the Property;
 - (b) One well is located within the interior of a building under construction, and the second well is located near the River; and
 - (c) Neither well can be used to pump water into tanker trucks.

- (13) On 31 October 2016, the DEM received electronic correspondence from Mel DeCarvalho, the general manager for the East Smithfield Water District (“ESWD”) in response to the DEM’s inquiry regarding the sale of water to WESCO. Mr. DeCarvalho provided the following information:
 - (a) In August and September 2016, WESCO purchased a total of 2,142,000 gallons of water for resale to the Ocean State Power Facility; and
 - (b) WESCO did not purchase any water in 2015 or in July 2016.
- (14) On 2 November 2016, the DEM received electronic correspondence from Jill Parrett, an environmental specialist for TransCanada-Ocean State Power, the owner of the Route 102 Facility, in response to the DEM’s inquiring regarding the purchase of water from WESCO. Ms. Parrett provided the following information:
 - (a) WESCO delivered 131 loads of water to the Route 102 Facility in 2015 over 4 days (27 August 2015, 28 August 2015, 1 September 2015 and 2 September 2015); and
 - (b) WESCO delivered 438 loads of water to the Route 102 Facility in 2016 over 10 days (28 July 2016, 29 July 2016, 2 August 2016, 3 August 2016, 13 August 2016, 14 August 2016, 8 September 2016, 9 September 2016, 10 September 2016 and 20 September 2016).
- (15) Upon information and belief, the water that was transported to the Route 102 Facility from the Property in 2015 and 2016 was withdrawn from the River.
- (16) The DEM has not issued a permit to Respondents to withdraw water from the River.

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 5.01** – 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 **IMMEDIATELY** cease from any further withdrawal of water from the River or other freshwater wetlands. No withdrawal of water from any freshwater wetlands are allowed without first obtaining a permit from the DEM.

E. 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:

\$43,368

- (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 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 Respondents 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.

F. 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's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E 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:
- Susan Forcier, 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) 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) Susan Forcier at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David Chopy of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7400.

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 F 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:

Wesco Realty, LLC
c/o David H. Ferrara, Registered Agent
21 Garden City Drive
Cranston, RI 02920

WESCO OIL COMPANY
c/o David H. Ferrara, Registered Agent
21 Garden City Drive
Cranston, RI 02920

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: OCI-FW-16-119

Respondents: Wesco Realty, LLC and WESCO OIL COMPANY

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	
C (1) and (2) – Alteration of Wetland Without Permit	Type I (\$10,000 Max. Penalty)*	Major	\$5,000	6 days	\$30,000
<i>SUB-TOTAL</i>					\$30,000

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

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.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
<p>Economic benefit of noncompliance identified by the DEM for withdrawing water from the Woonosquatucket River without a permit from the DEM.</p> <p>The cost associated with purchasing the water was obtained from the East Smithfield Water District.</p> <p>The economic benefit gained was calculated by utilizing an EPA computer model entitled "BEN" which performs a detailed economic analysis. The values used in this analysis are as listed in this table.</p>	<p>Water delivered from WESCO to Ocean State Power Facility in 2015 = 1,113,500 gallons (131 loads @8,500 gallons per load)</p> <p>Water delivered from WESCO to Ocean State Power Facility in 2016 = 3,723,000 gallons (438 loads @ 8,500 gallons per load)</p> <p>Water purchased from East Smithfield Water District in 2016 = 2,142,000 gallons.</p> <p>Water withdrawn from the Woonosquatucket River in 2015 and 2016 = 2,694,500 gallons (1,113,500 + 3,723,000 – 2,142,000).</p> <p>The cost to purchase the water from the East Smithfield Water District in 2016 was \$7.1765 per 1000 gallons.</p> <p>Cost to purchase the 2,694,500 gallons that was withdrawn from the Woonosquatucket River = \$19,337 (2,694,500/1000 x 7.1765)</p>	<p>\$13,368</p>
SUB-TOTAL		\$ 13,368

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.
<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= \$43,368

PENALTY MATRIX WORKSHEET

CITATION: Alteration of Wetland Without Permit
 VIOLATION NOS.: C (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:** Respondents altered freshwater wetlands by withdrawing water from the Woonosquatucket River without a permit from the DEM. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.
- (B) **Environmental conditions:** The portion of the Woonosquatucket River where the withdrawal occurred is designated a Class B water. Class B waters are designated for fish and wildlife habitat and primary and secondary contact recreational activities. These waters are suitable for compatible industrial processes and cooling, hydropower, aquacultural uses, navigation, and irrigation and other agricultural uses. These water shall have good aesthetic value. This portion of the river is not listed as impaired for any of the designated uses. The water withdrawals occurred during the summer months, when the water level in the river was at its lowest and the potential impact to the river from the withdrawals was greatest. The DEM has no evidence that the withdrawals adversely affected any of the designated uses.
- (C) **Amount of the pollutant:** Approximately 2,694,500 gallons of water was withdrawn from the Woonosquatucket River. Of this, 1,113,500 gallons was withdrawn over 4 days in 2015 (27 August, 28 August, 1 September and 2 September) and 1,581,000 gallons was withdrawn over 2 days in 2016 (28 July and 29 July).
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Full duration unknown – at least 6 days. Water withdrawals occurred on 27 August 2015, 28 August 2015, 1 September 2015, 2 September 2015, 28 July 2016 and 29 July 2016. Respondents had tanker trucks withdraw water from the river on 131 separate occasions in 2015 and approximately 186 separate occasions in 2016. Each water withdrawal is a separate and distinct violation, and Respondents are subject to penalties up to \$10,000 per violation. For the purposes of this calculation, the DEM assessed a penalty per day (rather than per violation).
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to obtain a freshwater wetland permit from the DEM to prevent the noncompliance. Respondents mitigated the noncompliance by ceasing the water withdrawal from the river and purchasing water from the East Smithfield Water District after the DEM spoke with Chad Sirois, the president of WESCO, by telephone on 1 August 2016 advising Mr. Sirois that it was a violation of the DEM's regulations to withdraw water from the river without a permit.
- (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:** Respondents had complete control over the occurrence of the violation and had an obligation to protect the river.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Mr. Sirois told the DEM in telephone conversations on 1 August 2016 and 28 September 2016 that his company was not withdrawing water from the river and that he knew better. Mr. Sirois also provided false information to the DEM at the time of the conversations, stating that he had wells on the Property that were being used to pump the water that was being supplied to the 102 Facility.

<u> X </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 \$5,000	\$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