

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF ADMINISTRATIVE ADJUDICATION

IN RE: JAMES CORRIGAN
Notice of Violation No. 2621

FINAL DECISION AND ORDER

The Hearing Officer properly concluded that a jurisdictional wetland was altered in violation of R. I. Gen. Laws § 2-1-21(a) and that the administrative penalty conforms with the law and is not excessive. Once she reached the conclusion that the violation is supported by the evidence of record as outlined in the Notice of Violation, the Division is entitled to have the site restored to its original state insofar as possible, absent evidence to the contrary. The hearing officer, however, imposed a new burden on the Division to show by a preponderance of the evidence that the restoration order should be affirmed. She also concluded as a matter of law that the division failed to meet this newly created burden. Such a burden is novel and inappropriate. The Hearing Officer attempted to support this burden through her statements that Rhode Island Courts and an administrative decision have clearly stated that each case must be reviewed in accordance with its particular circumstances. However, the recent case by case analysis she discussed applies to the analysis performed by the division when reviewing an application to alter a site not to whether restoration is

appropriate after a violation has been found. Neither the Wetlands Regulations or the Rules of Practice for the Administrative Adjudication Division set forth a separate burden in a violation hearing to prove that the restoration ordered in the Notice of Violation and Order should be affirmed. Indeed, if a violator is not required to restore freshwater wetlands which were altered in violation of the law, it would allow the violator to reap the benefits of their unlawful acts.

The ordered portion of the Recommended Decision and Order is also flawed. The Hearing Officer lacks the authority to (a) order the violator to submit an application; and (b) require the Wetlands Division to review forthwith the application of the violator. If it were otherwise, a person could circumvent the Act by violating the law and, once caught, become entitled to expedited review. Moreover, the Wetlands Regulations prohibit the processing of an application if the site is subject to an unresolved Notice of Violation. Section 3.05 of the Wetlands Regulations provides that "applications subject to a prior Notice of Violation will not be processed unless a consent agreement is reached with this Department to resolve said violation."

Based upon the foregoing, I hereby adopt the following findings of facts; one through thirty-seven (1-37), and forty through forty-three (40-43).

I hereby adopt the following conclusions of law; one through seven (1-7).

THEREFORE, it is hereby

O R D E R E D

1. That the Notice of Violation and Order and Penalty issued to the Respondent is hereby sustained.

2. That the property owner cease and desist any work in the wetland without a permit.

3. That the respondent restore said freshwater wetlands to their state as of July 16, 1971 insofar as possible within forty-five (45) days of the date of the Final Order herein.

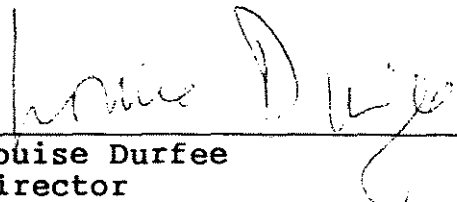
4. That the Respondent contact the Division of Freshwater Wetlands of the Department of Environmental Management prior to commencement of restoration to ensure proper supervision and to obtain the required restoration details from the representatives of said Division.

5. That the Respondent pay an administrative penalty in the amount of One Thousand Eight Hundred and Fifty and 00/100 (\$1,850.00) Dollars as set forth in the Notice of Violation and Order. Such payment shall be made within ten (10) days of the within Final Agency Decision and

Order and shall be in the form of a certified check made payable to the order of the Rhode Island General Treasurer and shall be mailed directly to:

Rhode Island Department of
Environmental Management
Office of Business Affairs
22 Hayes Street
Providence, Rhode Island 02908

Entered as a Final Agency Order this 25th day
of February, 1993.



Louise Durfee
Director
Department of Environmental
Management
9 Hayes Street
Providence, RI 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Decision and Order to be forwarded via regular mail, postage prepaid to James Corrigan, 55 Berkley Street, Cranston, RI 02910 and via interoffice mail to Michael K. Marran, Esquire, Two Charles Street, Providence, RI 02904-2260 on this 25th day of February, 1993.

