

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Joseph Accaoui  
Antoinette Accaoui**

**FILE NO.: C08-0009**

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 July 9, 2008 DEM issued an informal written notice to the Respondents for the violations. The notice required specific actions to correct the violations. DEM met with the Respondents on numerous occasions to attempt to resolve the violations. On May 19, 2011 the Respondents submitted a plan to resolve the violations, which was approved by DEM. On July 13, 2011 DEM inspected the property and determined that the Respondents completed all the work in accordance with the approved plan.

C. Facts

- (1) The property is located at 10 Grandstand Drive, Assessor's Plat 42, Lot 219 in the town of Lincoln, Rhode Island (the "Property").
- (2) The Respondents own the Property.
- (3) DEM inspected the Property on October 31, 2007, January 8, 2008 and May 29, 2008. The inspections revealed the following:
  - (a) Clearing, filling (in the form of at least soil material), installing a chain-link fence, portions of a paved basketball court, and maintaining a manicured lawn within Perimeter Wetland. This activity resulted in the unauthorized alteration of approximately 5,400 square feet of wetland.
  - (b) Clearing, filling (in the form of at least soil material), installing a chain-link fence, a portion of a paved basketball court and an in ground swimming pool within Riverbank Wetland, portions of which are also Perimeter Wetland. This activity resulted in the unauthorized of approximately 10,000 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 (effective April 23, 1998), Rule 7.01 – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (3) 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) Maintain the plantings that were installed as shown on the plan entitled “Proposed Wetland Restoration Plan, DEM File C08-0009, Prepared for: Joseph and Antoinette Accaoui, 10 Grandstand Drive, Lincoln, RI 02865”, sheet 1 of 1, revised May 19, 2011, that was prepared by Natural Resources Services, Inc. If any or all of the required plantings fail to survive at least one (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 one (1) full year.
- (2) 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 the 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 twenty (20) days of your receipt of this 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 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:

Joseph J. LoBianco, 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 Lincoln 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) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Mr. Stephen Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7406.

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

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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:

Joseph Accaoui  
10 Grandstand Drive  
Lincoln, RI 02865

Antoinette Accaoui  
10 Grandstand Drive  
Lincoln, RI 02865

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: C08-0009

Respondents: Joseph and Antoinette Accaoui

<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), (2) and (3) – Alteration of Perimeter Wetland, Fact C(3)(a)	Type I (\$5,000 Max. Penalty)*	Major	\$3,000	1 violation	\$3,000.00
D(1), (2) and (3) – Alteration of Riverbank Wetland and a portion of the Perimeter Wetland, Fact C(3)(b)	Type I (\$5,000 Max. Penalty)*	Major	\$5,000	1 violation	\$5,000.00
<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 Perimeter Wetland , Fact C (3)(a)

VIOLATION NO.: D (1), (2) and (3)

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.
<b>DEVIATION FROM THE STANDARD</b> <small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>				
<b>FACTORS CONSIDERED:</b> Taken from 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, filling (in the form of at least soil material), installing a chain-link fence, portions of a paved basketball court, and maintaining a manicured lawn within Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) <b>Environmental conditions:</b> The Perimeter Wetland was previously undisturbed throughout the altered 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. The unauthorized alteration was first observed by DEM on October 31, 2007.				
(F) <b>The areal extent of the violation:</b> The aerial extent of the violation is 5,400 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. The Respondents mitigated the noncompliance by partially restoring the Perimeter Wetland.				
(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 occurrence of the violation and had an obligation to protect the wetlands.				
(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

# PENALTY MATRIX WORKSHEET

CITATION: Alteration of Riverbank Wetland and portion of the Perimeter Wetland, Fact C(3)(b)  
 VIOLATION NO.: D (1), (2) and (3)

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 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, filling (in the form of at least soil material), installing a chain-link fence, a portion of a paved basketball court and an in ground swimming pool within Riverbank Wetland, portions of which are Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program. (B) <b>Environmental conditions:</b> The Riverbank Wetland and the Perimeter Wetland were previously undisturbed throughout the altered 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. The alteration was first observed by DEM on October 31, 2007. (F) <b>The areal extent of the violation:</b> The aerial extent of the violation is 10,000 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. The Respondents mitigated the noncompliance by partially restoring the Riverbank Wetland and Perimeter Wetland. (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 occurrence of the violation and had an obligation to protect the wetlands. (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