

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

**IN RE: Ayn.Wardo Realty, LLC**

**FILE NO: FW C09-0037**

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 party ("Respondent") has violated certain statutes and/or administrative regulations under under DEM's jurisdiction.

B. Administrative History

DEM issued an informal notice to the Respondent on July 22, 2010 for the violations and spoke to the Respondent's president on or about September 2, 2010. The Respondent failed to comply with the informal notice and continued to violate the DEM regulations after being notified of the violations.

C. Facts

- (1) The property is located at 32 Meeting Street, Assessor's Plat 2, Lot 17 in the town of Cumberland, Rhode Island (the "Property").
- (2) The Respondent owns the Property.
- (3) DEM inspected the Property on April 20, 2009 and August 6, 2009. The inspections revealed clearing and filling (in the form of at least gravel, sand, rock, tree slash, logs, brick, and concrete) within the 100-year Floodplain and 200-foot Riverbank Wetland of the Blackstone River (the "Floodplain" and "Riverbank Wetland", respectively). The alteration covered an area of approximately 40,000 square feet.
- (4) DEM inspected the Property on August 27, 2010. The inspection revealed the following unauthorized alterations of freshwater wetlands:
  - (a) Additional clearing, filling, and grading within the Floodplain and Riverbank Wetland since the prior inspection on August 6, 2009; and
  - (b) Fill pushed into the Blackstone River.

- (5) DEM inspected the Property on September 16, 2010. The inspection revealed additional earthwork in the Riverbank Wetland and Floodplain since the prior inspection on August 27, 2010.
- (6) The Respondent did not receive approval from the 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, regulations, and/or other requirements:

- (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 for 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 unauthorized alteration of the above described freshwater wetlands, and
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.
  - (a) Immediately install a continuous uninterrupted line of staked haybales or silt fence between those portions of the freshwater wetlands that have been altered without authorization and the undisturbed freshwater 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 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) Remove all unauthorized fill material from the Blackstone River that was caused by the work undertaken on the Property and remove all unauthorized fill material from the Floodplain and the Riverbank Wetland. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
  - (c) Seed all disturbed soil within the restoration area with a wildlife conservation grass seed mixture, and stabilize the area with a mat of loose hay mulch.

- (d) Plant trees and shrubs throughout all unauthorized cleared and altered areas within the Riverbank Wetland.

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion ten feet on center, four feet tall after planting, throughout all cleared areas. Tree species must include an equal distribution of at least three of the following selections:

White pine, *Pinus strobus*  
Red maple, *Acer rubrum*  
Silver maple, *Acer saccharinum*  
Northern red oak, *Quercus rubra*  
Weeping willow, *Salix babylonica*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion five feet on center, three feet tall after planting, throughout all cleared areas. Shrub species must include an equal distribution of at least four of the following selections:

Mountain laurel, *Kalmia latifolia*  
Giant rhododendron, *Rhododendron maximum*  
Silky dogwood, *Cornus amomum*  
Flowering dogwood, *Cornus florida*  
Winterberry, *Ilex verticillata*  
Inkberry, *Ilex glabra*  
Highbush blueberry, *Vaccinium corymbosum*  
Lowbush blueberry, *Vaccinium angustifolium*  
Sweet pepperbush, *Clethra alnifolia*  
Black chokeberry, *Aronia melanocarpa*

- (e) If any or all of the required plantings fail to survive at least one year from the time planting has been verified by DEM, the same plant species shall be replanted and maintained until such time that survival occurs for at least one year.
- (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, shall be allowed to revegetate naturally and 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.
- (h) The above restoration work shall be completed prior to **May 31, 2011**.

- (3) Contact Ms. Stacey Kurbiec Pinto at (401) 222-1360 ext. 7409 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.

**Twelve-Thousand Five-Hundred Dollars (\$12,500.00)**

- (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 days of your receipt of this NOV. Payment shall be in the form of a certified 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 respondent 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  
235 Promenade Street, 3<sup>RD</sup> Floor  
Providence, RI 02908-5767

- (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:
- Marisa Desautel, Esq.  
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 Cumberland wherein the Property is located 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) Marisa Desautel 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:

Ayn.Wardo Realty, LLC  
c/o Paul Shabo, Registered Agent  
1325 Broad Street  
Central Falls, RI 02863

by Certified Mail

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS  
 File No.: FW C09-0037  
 Respondent: Ayn.Wardo Realty LLC

<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) - First Alteration of a Riverbank Wetland and Floodplain	Type I (\$ 5,000 Max. Penalty)*	Major	\$5,000	1 violation	\$5,000.00
D(1) and (2) - Second Alteration of Riverbank Wetland and Floodplain	Type I (\$ 5,000 Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250.00
D(1) and (2) - Third Alteration of Riverbank Wetland and Floodplain	Type I (\$ 10,000 Max. Penalty)*	Moderate	\$ 5,000	1 violation	\$5,000.00
D(1) and (2) - Alteration of a River	Type I (\$ 5,000 Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250.00
<b>SUB-TOTAL</b>					<b>\$12,500.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$12,500.00**

# PENALTY MATRIX WORKSHEET

CITATION: First Alteration of a Riverbank Wetland and Floodplain  
 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 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 Respondent cleared, graded, and filled (in the form of at least gravel, sand, rock, tree slash, logs, brick, and concrete) within the 100-year Floodplain and 200-foot Riverbank Wetland of the Blackstone River. The severity of the alteration to the wetland environment was determined to be of major significance to the regulatory program.				
(B) <b>Environmental conditions:</b> The Riverbank Wetland and Floodplain (in the inner 70-100 feet immediately adjacent to the Blackstone River on the property) was previously vegetated with trees and shrubs.				
(C) <b>Amount of the pollutant:</b> Not relevant				
(D) <b>Toxicity or nature of the pollutant:</b> Not relevant				
(E) <b>The duration of the violation:</b> Unknown. The violation was observed by DEM on April 20, 2009 and August 6, 2009.				
(F) <b>The areal extent of the violation:</b> The areal extent of the violation is approximately 40,000 ft <sup>2</sup> .				
(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> Respondent failed to obtain the appropriate permit from DEM. Respondent was issued a Notice of Intent to Enforce (NOIE) by DEM on July 22, 2010 and was required to restore the wetlands by September 30, 2010. The Respondent has failed to comply with the NOIE.				
(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 relevant.				
(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 Respondent had complete control over the occurrence of the violation and had an obligation to apply for a permit from DEM.				
(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Not relevant.				
MINOR		MODERATE		<u>X</u> MAJOR
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: Second Alteration of Riverbank Wetland and Floodplain

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

<b>TYPE</b>				
<u>X</u> <b>TYPE I</b> <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.		_____ <b>TYPE II</b> <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.		_____ <b>TYPE III</b> <i>INCIDENTAL</i> to protecting health, safety, welfare or environment.
<b>DEVIATION FROM THE STANDARD</b>				
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 Respondent cleared and filled within the 200-foot Riverbank Wetland and 100-year Floodplain of the Blackstone River (in areas that were not altered as observed in the prior inspections in 2009). The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) <b>Environmental conditions:</b> A portion of the Riverbank Wetland and Floodplain (in the inner 70-100 feet immediately adjacent to the Blackstone River) was previously cleared, filled, and graded as observed in the prior inspections.				
(C) <b>Amount of the pollutant:</b> Not relevant				
(D) <b>Toxicity or nature of the pollutant:</b> Not relevant				
(E) <b>The duration of the violation:</b> Unknown. This violation was observed by DEM on August 27, 2010.				
(F) <b>The areal extent of the violation:</b> Not determined.				
(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> Respondent failed to obtain the appropriate permit from DEM. Respondent was issued a Notice of Intent to Enforce (NOIE) by DEM on July 22, 2010 and was required to restore the wetlands by September 30, 2010. The Respondent has failed to comply with the NOIE.				
(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 relevant.				
(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 Respondent had complete control over the occurrence of the violation and had an obligation to apply for a permit from DEM				
(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Not relevant.				
<u>X</u> <b>MINOR</b>		<b>MODERATE</b>		<b>MAJOR</b>
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	MAJOR	\$2,500 to \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500	\$500 to \$1,250	\$250 to \$500
	<b>MINOR</b>	\$500 to \$1,250 <b>\$1,250</b>	\$250 to \$500	\$100 to \$250

# PENALTY MATRIX WORKSHEET

CITATION: Third Alteration of Riverbank Wetland and Floodplain  
 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 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 Respondent continued to grade and fill (in the form of at least soil material) within the 200-foot Riverbank Wetland and 100-year Floodplain of the Blackstone River. 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 Floodplain (in the inner 70-100 feet immediately adjacent to the Blackstone River) was previously cleared, filled, and graded as observed in the prior inspections. No erosion and sediment controls were present.				
(C) <b>Amount of the pollutant:</b> Not relevant				
(D) <b>Toxicity or nature of the pollutant:</b> Not relevant				
(E) <b>The duration of the violation:</b> This violation was observed by DEM on September 16, 2010.				
(F) <b>The areal extent of the violation:</b> The areal extent of the violation extends over the much of the same area previously observed.				
(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> Respondent failed to obtain the appropriate permit from DEM. Respondent was issued a Notice of Intent to Enforce (NOIE) by DEM on July 22, 2010 and was required to restore the wetlands by September 30, 2010. DEM informed the Respondent's president in a telephone conversation on September 2, 2010 that the work undertaken requires a permit from DEM. Despite these notices additional unauthorized work occurred in the wetlands.				
(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 relevant.				
(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 Respondent had complete control over the occurrence of the violation and had an obligation to apply for a permit from DEM.				
(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Not relevant.				
MINOR		<u>X</u> MODERATE		MAJOR
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	\$2,500 to \$5,000	\$1,000 to \$2,500
	<b>MODERATE</b>	\$2,500 to \$5,000 <b>\$5,000</b>	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

# PENALTY MATRIX WORKSHEET

CITATION: Alteration of a River

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 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 Respondent filled (in the form of at least soil material) within the Blackstone River. The severity of the alteration to the wetland environment was determined to be of significance to the regulatory program.				
(B) <b>Environmental conditions:</b> Fill from the alterations within the 200-foot Riverbank Wetland and 100-year Floodplain of the Blackstone River was pushed into the Blackstone River. No erosion or sediment controls were present.				
(C) <b>Amount of the pollutant:</b> Not relevant				
(D) <b>Toxicity or nature of the pollutant:</b> Not relevant				
(E) <b>The duration of the violation:</b> Unknown. This violation was observed by DEM on August 27, 2010.				
(F) <b>The areal extent of the violation:</b> Not determined.				
(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> Respondent failed to obtain the appropriate permit from DEM. Respondent was issued a Notice of Intent to Enforce (NOIE) by DEM on July 22, 2010 and was required to restore the wetlands by September 30, 2010. The Respondent has failed to comply with the NOIE.				
(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 relevant.				
(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 Respondent had complete control over the occurrence of the violation and had an obligation to apply for a permit from DEM.				
(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Not relevant.				
<u>X</u> MINOR		MODERATE		MAJOR
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	MAJOR	\$2,500 to \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500	\$500 to \$1,250	\$250 to \$500
	<b>MINOR</b>	\$500 to \$1,250 <b>\$1,250</b>	\$250 to \$500	\$100 to \$250