

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

**IN RE: Richard Caparco
Delores Caparco**

**FILE NO.: OCI-FW-13-91 and
FW C14-0066**

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. Administrative History

On 31 May 2005 the Respondents signed an agreement to allow access through the property that is the subject of this notice of violation to remove sediment from Ropewalk Pond. Pursuant to the agreement the Respondents acknowledged that freshwater wetlands were present on the property and agreed not to alter the character of freshwater wetlands by undertaking any additional activities, including but not limited to construction, excavation, filling, grading and removal of vegetation without the DEM's prior written approval.

C. Facts

- (1) The property is located approximately 35 feet north of Jade Road, generally opposite utility pole 2, approximately 150 feet south of the southern edge of Ropewalk Pond, adjacent to and approximately 80 feet west of the dwelling at 10 Jade Road, approximately 225 feet east/northeast of the intersection of Jade Road and Myra Road, Assessor's Plat (Map) 14, Lot 30 in the town of Coventry, Rhode Island (the “Property”).
- (2) The Property includes a wooded freshwater wetland (the “Wooded Wetland”) that abuts Ropewalk Pond (the “Pond”). The Wooded Wetland and the Pond are contiguous and are hereby defined as a wetland complex (the “Wetland Complex”). A 50 foot perimeter wetland is associated with the Wetland Complex (the “Perimeter Wetland”).
- (3) The Respondents own the Property.

- (4) On 3 September 2013 and 12 December 2013 the DEM inspected the Property. The inspections revealed the following:
- (a) Clearing, stumping and grubbing, filling (with soil material, sediments, crushed asphalt, boulders, and construction materials, including a concrete slab and a concrete block retaining wall), grading, and creating surface disturbance within the Wooded Wetland to construct a garage and driveway. These activities resulted in the unauthorized alteration of approximately 3300 square feet of freshwater wetland.
 - (b) Clearing, stumping and grubbing, filling (with soil material, crushed asphalt, boulders, and construction materials, including a concrete slab), grading, and creating surface disturbance within the Perimeter Wetland, portions of which are also riverbank wetland associated with a stream (the “Riverbank Wetland”), to construct a garage and driveway and 3 accessory structures (2 sheds and a canvass-covered hut). These activities have resulted in the unauthorized alteration of approximately 8100 square feet of freshwater wetland.
- (5) The Respondents did not receive approval from the DEM to alter the freshwater wetlands on the Property.

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, Rule 5.01A** – 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:

FRESHWATER WETLANDS

- (1) **IMMEDIATELY** cease and desist from any further alteration of the above described freshwater wetlands, and

(2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

(a) Prior to the commencement of restoration install a continuous uninterrupted line of staked haybales, silt fence, fiber logs, or other acceptable soil erosion/sediment control devices between all existing disturbed surfaces/areas to be restored and any adjacent undisturbed freshwater wetlands. Any previously installed soil erosion/sediment controls must be inspected for failure and replaced or repaired as needed. 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 on-site, as deemed necessary, to protect any and all freshwater wetlands.

(b) Remove all unauthorized fill material from the Wooded Wetland, Perimeter Wetland and Riverbank Wetland, including the garage in its entirety, sheds, canvass covered hut, retaining wall, concrete slab, construction materials, landscaping improvements, and deposited fill material. Fill material within the Wooded Wetland must be removed down to the original wetland surface grades (that is, to the elevation of the original hydric organic surface soils). If the original hydric soil is no longer present then an additional 6 inches of fill must be removed and 6 inches of a proper high-organic plantable soil must be added. Following fill removal and the establishment of proper wetland grades, affected surfaces must be seeded with a proper wetland seed mixture and covered with a thick mat of spread hay mulch. Fill material within the Perimeter Wetland and Riverbank Wetland must be removed down to the grades present prior to the unauthorized alterations, seeded with a proper wildlife conservation seed mixture, and covered with a thick mat of spread hay mulch. If an adequate plantable soil is not remaining following fill removal, then 4 inches of an adequate plantable soil must be added. Following fill removal all affected surfaces must be seeded with a wildlife conservation seed mixture and covered with spread hay mulch. All fill material that is removed must be deposited in an appropriate upland location, outside of all freshwater wetlands.

(c) Following the completion of fill removal and grading, plant the unauthorized cleared/alterd portions of the Perimeter Wetland and Riverbank Wetland with trees and shrubs as follows:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 18 feet on center, 4 feet tall after planting, throughout the areas defined above. Tree species must include an equal distribution of at least 3 of the following selections:

White pine, *Pinus strobus*
Northern white cedar (native variety), *Thuja occidentalis*
White ash, *Fraxinus americana*
White oak, *Quercus alba*
Northern red oak, *Quercus rubra*
Sassafras, *Sassafras albidum*
Gray birch, *Betula populifolia*; and/or
Black birch, *Betula lenta*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion 10 feet on center, at least 3 feet tall after planting, throughout the areas defined above. Shrub species must include an equal distribution of at least 4 of the following selections:

Mountain laurel, *Kalmia latifolia*
Gray (stiff, red panicle) dogwood, *Cornus foemina*
Arrowwood (southern), *Viburnum dentatum*
Wild raisin, *Viburnum cassinoides*
American cranberrybush, *Viburnum trilobum*
Lowbush blueberry, *Vaccinium angustifolium*
Bayberry, *Myrica pennsylvanica*
Black Huckleberry, *Gaylussacia baccata*
Inkberry, *Ilex glabra*; and/or
Witchhazel, *Hamamelis virginiana*

Balled and burlapped or transplanted evergreen tree species must be planted in a straight line, 8 feet on center, 5 feet tall after planting, along the entire outer (landward) edge of the restored Perimeter Wetland and Riverbank Wetland. The tree species must include at least 2 of the following selections:

Northern white cedar, *Thuja occidentalis*
White pine, *Pinus strobus*
Pitch Pine, *Pinus rigida*
Eastern hemlock, *Tsuga canadensis*; and/or
Red cedar, *Juniperus virginiana*

- (d) Replant any of the plantings that fail to survive at least 1 full year from the time they have been planted until such time that survival is maintained over the entire following year.
- (e) All restored wetland areas, including replanted areas, must be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other disturbances, alterations, or improvements are allowed within the restored wetland areas, or within any other freshwater wetlands on the Property, without first obtaining a permit from the DEM.

- (f) Upon stabilization of disturbed/restored surface areas, all artificial erosion and sedimentation controls (for example, silt fences and silt curtains) must be removed from freshwater wetlands. Staked haybales, spread hay mulch, and other naturally-based/bio-degradable erosion control measures may remain in place to decompose naturally. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.
- (g) The above restoration work must be completed prior to **15 October 2014**.
- (h) Contact Mr. Bruce Ahern at 401-222-1360 ext. 7703 prior to the commencement of the wetland restoration to ensure proper supervision and to obtain any additional required restoration details.

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:

Five Thousand Dollars (\$5,000)

- (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 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.

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 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 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, 2ND 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 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, 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 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 Coventry 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 Sections 2-1-24 and 23-18.9-13, 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. Bruce Ahern or Mr. Stephen Tyrrell of the DEM Office of Compliance and Inspection at 401-222-1360 extensions 7703 and 7406, respectively.

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

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:

Richard Caparco
10 Jade Road
Coventry, RI 02816

Delores Caparco
10 Jade Road
Coventry, RI 02816

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Programs: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS
 File No.: OCI-FW-13-91 and C14-0066
 Respondents: Richard Caparco and Delores Caparco

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 Wooded Wetland	Type I (\$10,000 Max. Penalty) ¹	Moderate	\$2,500	1 violation	\$2,500
D (1) and D (2) – Alteration of Perimeter Wetland and Riverbank Wetland	Type I (\$10,000 Max. Penalty) ¹	Moderate	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$5,000

*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 cannot 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= \$5,000

PENALTY MATRIX WORKSHEET

CITATION: Alteration of Wooded Wetland

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

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondents altered freshwater wetlands by clearing, stumping and grubbing, filling (with soil material, sediments, crushed asphalt, boulders, and construction materials, including a concrete slab and a concrete block retaining wall), grading, and creating surface disturbance within a pond and wooded wetland to construct a garage structure and driveway. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.</p> <p>(B) Environmental conditions: Prior to the unauthorized alterations the wooded wetland was in a natural condition, densely covered with woody (tree and shrub) and herbaceous vegetation.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown. The DEM first documented the violation on 3 September 2013.</p> <p>(F) Areal extent of the violation: About 3300 square feet.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to take reasonable and appropriate steps to prevent the noncompliance. The Respondents were aware of the freshwater wetlands on the property, but failed to prevent the noncompliance. The Respondents installed hay bales and silt fence (as recommended by the DEM inspector on 3 September 2013) to attempt to mitigate further impacts to the 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 occurrence of the violation and the violation was foreseeable. On 31 May 2005 the Respondents signed an agreement authorizing access through the wetlands to remove sediment from Rope Walk Pond. The Respondents were aware of the presence of freshwater wetlands on the property and had an obligation to protect the wetlands or obtain a permit from the DEM to alter the wetlands.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> 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	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2500 to \$5000 \$2,500	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Alteration of Perimeter Wetland and Riverbank Wetland
 VIOLATION NO.: D (1) and D (2)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondents altered freshwater wetlands by clearing, stumping and grubbing, filling (with soil material, crushed asphalt, boulders, and construction materials, including a concrete slab), grading, and creating surface disturbance within a perimeter wetland and riverbank wetland to construct a garage and driveway, sheds and a canvass-covered hut structure. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.</p> <p>(B) Environmental conditions: The Respondents purchased the lot that includes the perimeter wetland and riverbank wetland on 10 May 1990. Aerial photographs taken in March/April 1992 show that the perimeter wetland and riverbank wetland were in a natural condition, densely covered with woody (tree and shrub) and herbaceous vegetation. Over the years after 1992 the Respondents cleared the perimeter wetland and riverbank wetland without authorization from the DEM. Prior to the unauthorized alterations that are the subject of this NOV, portions of the perimeter wetland and riverbank wetland were cleared and lawn was present; however, some mature trees and canopy were still present and the perimeter wetland and riverbank wetland provided some habitat value. The unauthorized alterations that are the subject of this NOV eliminated all remaining habitat value of the perimeter wetland and riverbank wetland.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown. The DEM first documented the violation on 3 September 2013.</p> <p>(F) Areal extent of the violation: About 8100 square feet.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to take reasonable and appropriate steps to prevent the noncompliance. The Respondents were aware of the freshwater wetlands on the property, but failed to prevent the noncompliance. The Respondents installed hay bales and silt fence (as recommended by the DEM inspector on 3 September 2013) to attempt to mitigate further impacts to the 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 occurrence of the violation and the violation was foreseeable. On 31 May 2005 the Respondents signed an agreement authorizing access through the wetlands to remove sediment from Rope Walk Pond. The Respondents were aware of the presence of freshwater wetlands on the property and had an obligation to protect the wetlands or obtain a permit from the DEM to alter the wetlands.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u>X</u> 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	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$2,500	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500