

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: **Cardi Corporation
 NORTH-EASTERN TREE SERVICE, INC.**

FILE NO.: FW 14-147

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

The DEM issued a freshwater wetlands permit to the Rhode Island Department of Transportation (“DOT”) associated with roadway and drainage improvements in the village of Apponaug. The permit included specific language to provide extra protection to the wetlands due to the presence of *American Waterwort*, a plant listed as a species of concern under the DEM's Natural Heritage Program and defined as a rare plant under the DEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (the “Freshwater Wetland Regulations”), and the critical nature of the wetland habitat in this area. The wetland habitat consisted of a dense, vegetated buffer of mature trees and shrubs that provided shade and a food source for wildlife. Prior to the start of construction, and pursuant to the permit, the DEM and the DOT met on site with the DOT's environmental consultant to identify the project limit of disturbance. The DOT met with Cardi Corporation (“Cardi”) to review the locations of *American Waterwort* and the required protective measures. Despite the permit, identifying the limits of disturbance, and the site meeting with the DOT, the Respondents altered the wetlands on 2 separate occasions in noncompliance with the permit. The alterations caused long term damage to the wetlands (by cutting of the mature trees and shrubs) and the destruction of 1 colony of *American Waterwort*.

C. Facts

- (1) The property is located along Centerville Road (Route 117) in the city of Warwick, Rhode Island (the “Property”).
- (2) On 8 October 2013, the DEM issued the DOT a Permit to Alter (No. 11-0099) consisting of an approved plan and letter of Terms and Conditions (the “Permit”). The Permit authorized the alteration of wetlands associated with roadway and drainage improvements on the Property.

- (3) The Permit requires:
 - (a) Limiting the alterations to only those shown on the approved plans ("Condition 2");
 - (b) Use all efforts to preserve all trees greater than 24 inches in diameter that are located within freshwater wetlands to the greatest extent practicable ("Condition 13"); and
 - (c) Install, use and follow all best management practices detailed or described on the approved plans to minimize or prevent adverse impacts to any adjacent freshwater wetlands ("Condition 15").
- (4) The DOT awarded a contract to Cardi to complete the work approved in the Permit.
- (5) On 2 July 2014, representatives from DEM, DOT, Gordon R. Archibald, Inc., and Applied Bio-Systems met on site to locate and identify the limits of disturbance for the project and the location of *American Waterwort* colonies.
- (6) Cardi subcontracted a portion of the work approved in the Permit to NORTH-EASTERN TREE SERVICE, INC ("NE Tree").
- (7) On 14 August 2014, the DOT informed the DEM that clearing of wetlands on the Property had occurred in noncompliance with the Permit.
- (8) On 19 August 2014, the DEM and the DOT inspected the Property. The inspection revealed clearing of a Riverbank Wetland associated with the Apponaug River in noncompliance with Condition 2, Condition 13, and Condition 15. This activity resulted in the unauthorized alteration of approximately 5,250 square feet of freshwater wetland.
- (9) On 18 September 2014, the DOT informed the DEM that excavation within wetlands on the Property had occurred in noncompliance with the Permit.
- (10) On 24 September 2014, the DEM and the DOT inspected the Property. The inspection revealed the following:
 - (a) Draining, excavating, grading, filling and creating soil disturbance within a Special Aquatic Site adjacent to the Apponaug River in noncompliance with Condition 2 and Condition 15. This activity resulted in the unauthorized alteration of approximately 240 square feet of freshwater wetland and the destruction of 1 colony of *American Waterwort*; and

- (b) Clearing and grubbing within a Riverbank Wetland associated with the Apponaug River with no erosion and sediment controls to protect the Special Aquatic Site.
- (11) On 9 October 2014, the DEM and the DOT met with Michael Sepe of NE Tree at the Property. Mr. Sepe agreed to install trees and shrubs throughout the altered Riverbank Wetland.
- (12) Inspections by the DEM and the DOT in the Fall of 2014 revealed that the agreed upon work to mitigate the damage caused by the unauthorized alterations was completed.

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 Freshwater Wetland Regulations, Rule 5.01** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (3) **DEM's Freshwater Wetland Regulations, Rule 10.08** – requiring compliance with all conditions of a permit issued by the DEM for a significant alteration.

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 against the following Respondents:
 - (a) **Cardi and NE Tree for violations associated with Fact B(8) - Ten Thousand Dollars (\$10,000)**
 - (b) **Cardi for violations associated with Fact B(10) - Ten Thousand Dollars (\$10,000)**
- (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 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.

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 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 for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:

Christina A. Hoefsmit, Esq.
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) 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) Christina A. Hoefsmit, Esq. 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. 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 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:

Cardi Corporation
c/o Steven A. Cardi, Registered Agent
400 Lincoln Avenue
Warwick, RI 02888

NORTH-EASTERN TREE SERVICE, INC.
c/o Michael Sepe, Registered Agent
1000 Pontiac Avenue
Cranston, RI 02920

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW 14-147

Respondents: Cardi Corporation and NORTH-EASTERN TREE SERVICE, INC.

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), (2) and (3) – Alteration of Riverbank Wetland	Type (\$10,000 Max. Penalty)*	Major	\$10,000	1 violation	\$10,000
D (1), (2) and (3) - Alteration of Special Aquatic Site and Riverbank Wetland	Type (\$10,000 Max. Penalty)*	Major	\$10,000	1 violation	\$10,000
SUB-TOTAL					\$20,000

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.
<p>The maximum penalty allowed by law is being assessed for these violations, so the DEM has made no attempt to quantify the economic benefit from the noncompliance.</p>

COST RECOVERY
<p>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>
<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 = \$20,000

PENALTY MATRIX WORKSHEET

CITATION: *Alteration of Riverbank Wetland*
 VIOLATION NO: *D (1), (2) and (3)*
 RESPONDENTS: *Cardi Corporation and NORTH-EASTERN TREE SERVICE, INC.*

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.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <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 within Riverbank Wetland associated with Apponaug River (RBW) in non-compliance with a permit that was issued by the DEM. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The RBW prior to the alterations was heavily vegetated with a mature stand of deciduous trees and understory and is in the vicinity of a plant, <i>American Waterwort</i> that is listed as a species of concern under the DEM's Natural Heritage Program and defined as a rare plant under the DEM's Freshwater Wetland regulations. The mature trees provided shading to the Apponaug River and were a food source for fish and wildlife species. The absence of mature trees will cause an increase in the temperature of the river and will decrease the food source for fish and wildlife species.</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: The unauthorized alteration occurred on 11 August 2014. The RBW was planted with trees and shrubs on 6 November 2014; however, the alteration will affect the habitat for decades due to the absence of the mature trees.</p> <p>(F) Areal extent of the violation: The aerial extent of the violation is approximately 5,250 square feet.</p>		
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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 DEM issued a permit to the DOT for the project. The permit included specific language to provide extra protection to the RBW due to the presence of *American Waterwort* and the critical nature of the wetland habitat in this area. Prior to the start of construction, and pursuant to the permit, the DEM and the DOT met on site with the DOT's environmental consultant to identify the project limit of disturbance (LOD). On 9 July 2014 the DOT sent a letter to the DEM stating that the DOT met with Cardi to review the locations of *American Waterwort* and the required protective measures. Despite the permit, the LOD and the site meeting with the DOT, the Respondents failed to protect the wetland. On 18 September 2014 the DOT issued a notice to Cardi advising Cardi of the violation and required Cardi to mitigate the violation. To mitigate the noncompliance, on 6 November 2014 NE Tree planted trees and shrubs in the RBW.
- (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:** Cardi has an extensive history of noncompliance with the environmental laws and the DEM's regulations. Since 2002, the DEM has issued 6 notices of violations/citations that included the assessment of administrative penalties. Of these, 2 involved unauthorized alterations to freshwater wetlands. On 14 May 2003 the DEM issued an NOV to Cardi for causing runoff of sediment into wetlands from its gravel bank operation in Coventry. A penalty of \$28,800 was assessed. On 1 March 2007 the DEM issued an NOV to Cardi for unauthorized alterations to wetlands and its failure to comply with numerous conditions of the permit issued to the DOT associated with road improvements on Route 403 in East Greenwich. A penalty of \$35,000 was assessed. NE Tree also has been previously cited by the DEM for unauthorized alterations to freshwater wetlands. On 28 May 2009 the DEM issued an NOV to NE Tree for clearing and filling within a riverbank wetland on property it operates from in Cranston. A penalty of \$3,500 was assessed.
- (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 project, were aware of the LOD, and had an obligation to protect the wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The DEM is aware of (or has documented information of) only 4 known populations of *American Waterwort*. Aside from the location of this NOV, the plant has been observed in Washington County (town/location not specified), New Shoreham (location not specified) and Pawtucket (Slater Park). The plant is listed as a species of concern because of its rarity and/or vulnerability.

 X MAJOR

MODERATE

MINOR

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 \$10,000	\$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

PENALTY MATRIX WORKSHEET

CITATION: *Alteration of Special Aquatic Site and Riverbank Wetland*
 VIOLATION NO: *D (1), (2) and (3)*
 RESPONDENT: *Cardi Corporation*

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:** The Respondent altered freshwater wetlands by draining, excavating, grading, filling and creating soil disturbance within a Special Aquatic Site adjacent to the Apponaug River and clearing and grubbing within Riverbank Wetland associated with the Apponaug River (RBW) in noncompliance with the permit. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.
- (B) **Environmental conditions:** The Special Aquatic Site prior to the alterations was in a natural, undisturbed condition. The wetland is the home to a plant, *American Waterwort* that is listed as a species of concern under the DEM's Natural Heritage Program and defined as a rare plant under the DEM's Freshwater Wetland regulations 3 colonies of the plant were present in the wetland prior to the alterations, and 1 of these colonies was destroyed as a result of the alterations.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** About 2 ½ months, except for the colony of *American Waterwort* that was destroyed. The unauthorized alteration occurred on 16 September 2014. The excavated material from the Special Aquatic Site was placed back into the wetland on or about 9 October 2014 (the water elevation within the wetland was within a few inches of its pre-altered level). A pipe that was present (that was damaged during the excavation and contributed to the water draining from the wetland) was repaired on or about 4 December 2014.
- (F) **Areal extent of the violation:** The aerial extent of the violation is approximately 250 square feet.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. The DEM issued a permit to the DOT for the project. The permit included specific language to provide extra protection to the RBW due to the presence of *American Waterwort* and the critical nature of the wetland habitat in this area. Prior to the start of construction, and pursuant to the permit, the DEM and the DOT met on site with the DOT's environmental consultant to identify the project limit of disturbance (LOD). On 9 July 2014 the DOT sent a letter to the DEM stating that the DOT met with Cardi to review the locations of *American Waterwort* and the required protective measures. As a result of the 11 August 2014 violation, the DOT notified Cardi by electronic mail on 25 August 2014 and by regular mail on 12 September 2014. The notifications advised Cardi that penalties were being assessed for the 11 August 2014 violation. Despite the permit, the LOD, the site meeting with the DOT, and the notifications sent to Cardi for the violation that occurred on 11 August 2014, the Respondent failed to protect the wetland (even though it's in close proximity to the violation that occurred on 11 August 2014) and failed to install erosion/sediment controls within the RBW to minimize damage to the wetlands. On 18 September 2014 the DOT issued a notice to Cardi advising Cardi of the violation and required Cardi to mitigate the violation. To mitigate the noncompliance the excavated material from the Special Aquatic Site was placed back into the wetland on or about 9 October 2014 (the water elevation within the wetland was within a few inches of its pre-altered level). A pipe that was present (that was damaged during the excavation and contributed to the water draining from the wetland) was repaired on or about 4 December 2014.
- (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:** Cardi has an extensive history of noncompliance with the environmental laws and the DEM's regulations. Since 2002, the DEM has issued 6 notices of violations/citations that included the assessment of administrative penalties. Of these, 2 involved unauthorized alterations to freshwater wetlands. On 14 May 2003 the DEM issued an NOV to Cardi for causing runoff of sediment into wetlands from its gravel bank operation in Coventry. A penalty of \$28,800 was assessed. On 1 March 2007 the DEM issued an NOV to Cardi for unauthorized alterations to wetlands and its failure to comply with numerous conditions of the permit issued to the DOT associated with road improvements on Route 403 in East Greenwich. A penalty of \$35,000 was assessed.
- (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 Respondent had complete control over the project, were aware of the LOD, and had an obligation to protect the wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The DEM is aware of (or has documented information of) only 4 known populations of *American Waterwort*. Aside from the location of this NOV, the plant has been observed in Washington County (town/location not specified), New Shoreham (location not specified) and Pawtucket (Slater Park). The plant is listed as a species of concern because of its rarity and/or vulnerability.

 X MAJOR

MODERATE

MINOR

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 \$10,000	\$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