

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

**IN RE: Alfred Detri Jr.
Lucille Detri**

**FILE NO.: FW C12-0045
X-Ref NO.: C05-0077**

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

The DEM issued a notice of violation to the Respondents on June 28, 2006 for unauthorized alterations of the same freshwater wetlands that are the subject of this notice of violation. The Respondents restored the wetlands and signed an agreement with DEM that required them to allow the wetlands to revert to a natural wild condition. The Respondents have failed to comply with the agreement.

C. Facts

- (1) The property is located at 66 Colwell Road, Assessor's Plat 47, Lot 218 in the town of Smithfield, Rhode Island (the “Property”).
- (2) The Respondents own the Property.
- (3) DEM inspected the Property on April 6, 2012. The inspection revealed unauthorized alterations of freshwater wetlands. Specifically, clearing and maintaining a lawn within Perimeter Wetland. This activity has resulted in the unauthorized alteration of approximately 7,250 square feet of wetland.
- (4) The Respondents did not receive approval from the DEM to alter the freshwater wetlands on the Property in the area 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, 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 alteration of the above described freshwater wetlands, and
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) Prior to the commencement of restoration, install a continuous uninterrupted line of staked haybales or silt fence between all areas to be restored and the adjacent undisturbed freshwater wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced) during and following the completion of the required wetland restoration activities, 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 all wetlands.
- (b) The unauthorized lawn within the Perimeter Wetland must be properly scarified/tilled by manually turning the soil over, or by rototilling the area. The exposed surface areas must then be over-seeded with a wildlife conservation seed mix and covered (to provide stabilization) with a mat of spread hay mulch.
- (c) Trees and shrubs must be planted throughout all unauthorized cleared/altered portions of the Perimeter Wetland as follows:

Balled and burlapped or transplanted tree species shall be planted in an interspersed fashion, ten (10) feet on center, four (4) feet tall after planting, throughout the areas defined above. Tree species shall include an equal distribution of at least three (3) of the following selections:

White pine, *Pinus strobus*
Red maple, *Acer rubrum*
White ash, *Fraxinus americana*
White oak, *Quercus alba*
Northern red oak, *Quercus rubra*
Gray birch, *Betula populifolia*
Black birch, *Betula lenta*
American beech, *Fagus grandifolia*
Yellow birch, *Betula allegheniensis*
Green Ash, *Fraxinus pennsylvanica*
Black Gum, *Nyssa sylvatica*

Balled and burlapped or transplanted shrub species shall be planted in an interspersed fashion five (5) feet on center, three (3) feet tall after planting, throughout the area defined above. Shrub species shall include an equal distribution of at least four (4) of the following selections:

Mountain laurel, *Kalmia latifolia*
Red osier dogwood, *Cornus stolonifera*
Giant rhododendron, *Rhododendron maximum* (shaded areas only)
Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*
Silky dogwood, *Cornus amomum*
Arrowwood (southern), *Viburnum dentatum*
American cranberrybush, *Viburnum trilobum*
Mapleleaf viburnum, *Viburnum acerifolium*
Winterberry, *Ilex verticillata*
Inkberry, *Ilex glabra*
American Holly, *Ilex opaca*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Spice bush, *Lindera benzoin*
Sweet pepperbush, *Clethra alnifolia*
Swamp azalea, *Rhododendron viscosum*

- (d) Plant a row of White Pine (*Pinus strobus*) or Northern white cedar (*Thuja occidentalis*) along the outer edge of the altered Perimeter Wetland. Plantings must be at least four (4) feet in height after planting and spaced ten (10) feet on-center.
- (e) If any or all of the required plantings fail to survive at least two (2) full years from the time the plantings have been verified by the DEM, the same plant species shall be replanted and maintained until such time that survival occurs over two (2) full years.
- (f) All restored wetland areas, including replanted areas, shall be allowed to revegetate naturally and revert to a natural wild state. No future clearing,

mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within other freshwater wetlands on the Property, without first obtaining a permit from the DEM.

- (g) Upon stabilization of all disturbed areas all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) shall be removed from the freshwater wetland. 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 shall be removed to a suitable upland area and all disturbed surfaces shall be stabilized as described above.
 - (h) The above restoration work shall be completed prior to **October 31, 2012**.
- (3) Contact Mr. Howard Cook at DEM (401) 222-1360 ext. 7161 prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No work shall commence until such time that you have met in the field with a representative of 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:

Four-Thousand Dollars (\$4,000.00)

- (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 twenty (20) 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's 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, 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 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 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 Smithfield 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. Howard Cook or Mr. Harold Ellis of the DEM Office of Compliance and Inspection at (401) 222-1360 extensions 7161 and 7401, 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 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 _____ 2012
the within Notice of Violation was forwarded to:

Alfred Detri Jr.
66 Colwell Road
Smithfield, RI 02828

Lucille Detri
66 Colwell Road
Smithfield, RI 02828

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C12-0045, X-ref C05-0077

Respondents: Alfred and Lucille Detri

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 (2) – Alteration of Perimeter Wetland	Type I (\$ <u>10,000</u> Max. Penalty)*	Moderate	\$4,000	1 violation	\$4,000.00
<i>SUB-TOTAL</i>					\$4,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$4,000.00

PENALTY MATRIX WORKSHEET

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

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ 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 *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents altered freshwater wetlands by clearing and maintaining a lawn within Perimeter Wetland in the same area that was previously restored. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.
- (B) **Environmental conditions:** The Perimeter Wetland was a previously restored area through a prior enforcement action by DEM. Restoration was necessary to restore the wetland to a natural forested condition. The Perimeter Wetland was returning to a natural, wild, vegetated area surrounding the adjacent wetland complex. Almost all of the previously planted trees and shrubs have been removed and the area is being mowed.
- (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:** Full duration unknown. Ms. Detri indicated to the inspector that she had done the work in September 2011.
- (F) **Areal extent of the violation:** The aerial extent of the violation is approximately 7,250 square feet.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents were issued a NOV on June 28, 2006 for unauthorized wetland alterations on the property. The wetland was restored in October 2006. The Respondents have once again altered these same wetlands without a permit. The Respondents had prior knowledge of the area to be protected and failed to take steps to prevent the alteration. Reasonable and appropriate steps to prevent and/or mitigate the noncompliance have not been taken.
- (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:** The Respondents were previously issued a NOV for unauthorized activity in the freshwater wetland cited above.
- (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 have complete control over the violation, are aware of the wetlands on the property, and have 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:** 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 \$4,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500