

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

**IN RE: David Duplessis**

**FILE NO.: OCI-FW-15-142  
X-Ref. File No. 14-0020**

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 the DEM's jurisdiction.

B. Administrative History

Respondent received a permit from the DEM to construct an onsite wastewater treatment system (“OWTS”) associated with a proposed dwelling on the property that is the subject of this Notice of Violation (“NOV”). The DEM inspected the OWTS, observed an alteration to a freshwater wetland and issued a stop work order to Respondent. In April 2014, the DEM issued a permit to Respondent to restore the wetland. In June 2014, Respondent restored the wetland and was given authorization by the DEM to proceed with the construction of the dwelling. Inspections by the DEM in 2015 led to the issuance of letters of noncompliance from the DEM to Respondent in July 2015 and November 2015 for altering the same wetland that Respondent had previously restored. Respondent failed to comply with the letters, which led to the issuance of a Notice of Intent to Enforce (“NIE”) and an Expedited Citation (“EC”) from the DEM to Respondent on 7 June 2016 and 22 July 2016, respectively. The EC included an administrative penalty of \$2,500. The NIE and EC were delivered to Respondent; however, Respondent failed to respond to the NIE or EC. An inspection by the DEM in December 2016 revealed that Respondent substantially restored the wetland in accordance with the NIE; however, he created additional alterations in another portion of the wetland. As of the date of the NOV, Respondent has failed to pay the penalty in the EC.

C. Facts

- (1) The property is located approximately 40 feet east of Iron Mine Hill Road near utility pole number 109, and approximately 3,900 feet southwest of its intersection with Eddie Dowling Highway (Route 146), Assessor’s Plat 17, Lot 310 in the town of North Smithfield (the “Property”).
- (2) On 14 April 2014, the DEM issued Insignificant Alteration Permit number 14-0020 to Respondent to restore a Forested Wetland (the “Forested Wetland”) on the Property (the “Permit”). The plan associated with the Permit clearly showed

the location of the Forested Wetland, which was delineated with wetland flags and wooden posts (and markers denoting wetlands).

- (3) On 22 June 2015, 6 November 2015 and 6 January 2016, the DEM inspected the Property. The inspections revealed filling (in the form of at least boulders, gravel and soil material) in the Forested Wetland. This activity resulted in the alteration of approximately **1,175 square feet** of freshwater wetland.
- (4) On 1 December 2016, the DEM inspected the Property. The inspection revealed clearing and excavating to create a channel, filling (in the form of at least rocks and soil material excavated from the channel), creating soil disturbance and driving a motorized vehicle within another portion of the Forested Wetland. These activities resulted in the alteration of approximately **5,500 square feet** of freshwater wetland.
- (5) The alterations to the Forested Wetland described above were in noncompliance with the Permit.
- (6) Respondent did not receive approval from the DEM to alter the Forested Wetland as described 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 (the "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 9.04(B)** – requiring an applicant to comply with all conditions of a permit issued by the DEM.

E. Order

Based upon the violations alleged above, the following actions are required for you to comply with the above-referenced statutes or regulations:

- (1) **IMMEDIATELY** cease from any further alterations of freshwater wetlands.
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

**RESTORATION REQUIREMENTS**

- (a) Backfill the channel that has been created within the Forested Wetland, utilizing the same material that was excavated from the wetland and discarded along the edges of the channel. The channel must be backfilled to an elevation that matches the grade of the surrounding undisturbed wetland surface. This work must be completed at the direction of the DEM.
- (b) Following the completion of the backfilling, all disturbed surface areas must be seeded with a proper wetland seed mixture and covered with a thick mat of straw mulch, which is free of any contaminants that might promote the spread of invasive plants.
- (c) Plant the Forested Wetland with trees and shrubs as follows:

Balled and burlapped or transplanted evergreen tree species must be planted in an interspersed fashion, 8 feet on-center (apart), 5 to 6 feet tall after planting, within the areas of the wetland as identified by the DEM. The tree species must be chosen from the following selections:

Northern white cedar (Eastern arborvitae), *Thuja occidentalis*  
White pine, *Pinus strobus*  
White spruce, *Picea glauca*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, 8 feet on center, 3 feet tall after planting, throughout the areas of the wetland as identified by the DEM. Shrub species must include an equal distribution of at least 3 of the following selections:

Red osier dogwood, *Cornus stolonifera*  
Elderberry, *Sambucus canadensis*  
Northern arrowwood, *Viburnum recognitum*  
Winterberry, *Ilex verticillata*  
Highbush blueberry, *Vaccinium corymbosum*  
Spicebush, *Lindera benzoin*  
Swamp azalea, *Rhododendron viscosum*  
Speckled alder, *Alnus rugosa*  
Smooth alder, *Alnus serrulata*

Red chokeberry, *Aronia arbutifolia*  
Swamp Rose, *Rosa palustris*

- (d) If any of the required plantings fail to survive at least 1 full year from the time they have been planted, replant and maintain the same plant species until such time that survival is maintained over 1 full year.
- (e) The above restoration work must be completed prior to 15 May 2017.

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:

**\$15,000**

- (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 the 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 Respondent in the 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's 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 the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the 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, 4<sup>TH</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'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 Hoefsmid, 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 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 the 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 (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the town of North 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) The 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 Hoefsmit at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Ms. Katherine Morgan or Mr. Stephen Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-4700 extensions 7255 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 G above.

FOR THE DIRECTOR

By: \_\_\_\_\_  
David E. Chopy, Chief  
DEM Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
the within Notice of Violation was forwarded to:

David Duplessis  
425 Iron Mine Hill Road  
North Smithfield, RI 02896

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS  
 File No.: OCI-FW-15-142 X-Ref. File No. 14-0020  
 Respondent: David Duplessis

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), D(2) and D(3) – Alteration of a Forested Wetland – Fact C(3)	Type I (\$10,000 Max. Penalty)*	Major	\$5,000	1 violation	\$5,000
D(1), D(2) and D(3) – Alteration of a Forested Wetland – Fact C(4)	Type I (\$10,000 Max. Penalty)*	Major	\$10,000	1 violation	\$10,000
<b><i>SUB-TOTAL</i></b>					<b>\$15,000</b>

\*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 Respondent has 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 = \$15,000**

**PENALTY MATRIX WORKSHEET**

CITATION: Alteration of a Forested Wetland – Fact C(3)

VIOLATION NOS.: D (1), (2) and 3

<b>TYPE</b>		
<p><u>  X  </u> <b>TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b> <small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></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) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands 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.</p> <p>(B) <b>Environmental conditions:</b> The Forested Wetland was undisturbed prior to the alteration with the exception of previous alterations completed by Respondent that were restored. In the eastern portion of the Property within the Forested Wetland is a special aquatic site (vernal pool), which provides a seasonal breeding habitat for vernal pool species. Respondent altered the Forested Wetland by filling (in the form of at least boulders, gravel, and soil material).</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> Full duration unknown – at least 1 year (but in may have been up to 2½ years). On 2 June 2014, the DEM received photographs showing that the Forested Wetland was restored. The DEM first documented the violation on 22 June 2015. A DEM inspection on 6 January 2016 revealed that the alterations remained. A DEM inspection on 1 December 2016 revealed that the wetland was restored in substantial compliance with the NIE.</p> <p>(F) <b>Areal extent of the violation:</b> Approximately 1,175 square feet.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by complying with the Permit. Respondent mitigated the noncompliance by complying with the NIE; however, he did not do so until after DEM issued him noncompliance letters on 1 July 2015 and 9 November 2015, the NIE and the EC.
- (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:** Respondent had complete control over the project and had an obligation to comply with the Permit. After Respondent altered the Forested Wetland and the DEM stopped construction, he obtained the Permit and restored the wetland in June 2014, and then altered the wetland in the same location again. After the DEM issued a letter of noncompliance on 1 July 2015, Respondent notified the DEM on 8 September 2015 that he intended to get into compliance within a few days; however, a follow up inspection by the DEM on 6 November 2015 revealed additional fill in the wetland.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>  X  </u> MAJOR	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	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$5,000</b>	\$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 Forested Wetland – Fact C(4)  
 VIOLATION NOS.: D (1), (2) and (3)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <u>INCIDENTAL</u> 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>		
<p><b><u>FACTORS CONSIDERED:</u></b></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) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands 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.</p> <p>(B) <b>Environmental conditions:</b> The Forested Wetland was undisturbed prior to the alteration with the exception of previous alterations completed by Respondent that were restored and the alteration cited in Fact C(3) above. In the eastern portion of the Property within the Forested Wetland is a special aquatic site (vernal pool), which provides a seasonal breeding habitat for vernal pool species. Respondent altered the Forested Wetland, including the special aquatic site (vernal pool), by clearing and excavating to create a channel, filling (in the form of at least rocks and soil material excavated from the channel), creating soil disturbance, and driving a motorized vehicle within the wetland.</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> Full duration unknown – between 3 months and 1 year. The DEM first documented the violation on 1 December 2016. The violation was not present on the DEM's prior inspection on 6 January 2016.</p> <p>(F) <b>Areal extent of the violation:</b> Approximately 5,500 square feet.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by complying with the Permit, the noncompliance letters issued by the DEM on 1 July 2015 and 9 November 2015, the NIE and the EC. The DEM inspection on 1 December 2016 revealed additional alterations within the same Forested Wetland that was the subject of the NIE and the EC.
- (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:** Respondent had complete control over the project and had an obligation to comply with the Permit. After Respondent altered the Forested Wetland and the DEM stopped construction, he obtained the Permit and restored the wetland in June 2014. The DEM inspection on 1 December 2016 revealed additional alterations within the same wetland.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>  X  </u> MAJOR	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	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$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