

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

**IN RE: Syed Husain
Sadia Husain**

FILE NO.: OCI-FW-15-117

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 30 September 2015, the DEM spoke to the Respondents in response to a complaint regarding alterations to freshwater wetlands on the property. The DEM advised the Respondents of the complaint and to cease work in wetlands. On 9 October 2015, the DEM inspected the property. During the inspection, the DEM inspector notified Mr. Husain of unauthorized alterations within freshwater wetlands. Mr. Husain was advised to stop working within the wetland areas, and he agreed to do so. On 16 October 2015, the DEM inspected the property in response to a complaint that work was continuing. The inspection revealed that additional unauthorized work was completed within wetlands. The DEM inspector issued a written cease and desist order to the contractor at the time of the inspection; however, at that time most of the work was completed.

C. Facts

- (1) The property is located at 20 Red Brook Crossing, Assessor's Plat 26, Lot 253, in the town of Lincoln, Rhode Island (the “Property”).
- (2) The Respondents own the Property.
- (3) On 9 October 2015 and 16 October 2015, the DEM inspected the Property. The inspections revealed the following:
 - (a) At least clearing, filling (with at least boulders and soil), creating soil disturbance, construction (of at least a fence, utilities, and a stone fire-pit), installation of a lawn, and landscaping within Swamp. These activities resulted in the unauthorized alteration of about 12,500 square feet of freshwater wetland; and

- (b) Clearing, stumping, grubbing, filling (with at least boulders and soil), grading, soil disturbance, construction (of at least a fence, swing-set, and utilities, and portions of an in-ground pool and patio), installation of a lawn, and landscaping within at least Perimeter Wetland. These activities resulted in the unauthorized alteration of about 7,600 square feet of freshwater wetland.
- (4) The Respondents did not receive approval from the DEM to alter freshwater wetlands on the Property in the areas specified above.
- (5) As of the date of the issuance of this Notice of Violation ("NOV"), the unauthorized alterations in the areas specified above are still present.

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) **IMMEDIATELY** cease and desist from any further alteration of the above described freshwater wetlands.
- (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 biodegradable fiber logs along the edge of the unauthorized fill 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 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 any and all unauthorized fill material (in the form of at least boulders and soil), along with the stone fire pit, utilities, fencing, lawn and landscaping materials from the Swamp. All unauthorized fill material must be removed down to an elevation that matches the adjacent undisturbed Swamp grades, to a point where original native hydric (organic) soils are encountered. All fill material that is removed must be deposited off-site, in an appropriate upland location, outside of any and all wetlands;
- (c) Remove any and all unauthorized fill material (in the form of at least boulders and soil), along with all portions of the in-ground swimming pool, patio, utilities, fencing, swing set, lawn and landscaping materials from the Perimeter Wetland. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands;
- (d) Re-grade any slope resulting from fill removal to a 3:1 slope or shallower. Finished slopes must be stabilized by seeding with a wildlife conservation grass seed mixture and by mulching all disturbed areas with a mat of loose hay;
- (e) Following fill removal operations the Swamp must be re-established and restored to the condition that existed prior to the initiation of the unauthorized alterations. If, following the fill removal required above, an adequate organic (hydric) soil substrate is not present the areas of concern must be further excavated (at the direction of the DEM) and an appropriate amount of high-organic plantable soil (6 inches minimum) must be applied to re-establish the correct elevation and hydrologic regime, matching those of the adjacent undisturbed Swamp. While performing the final grading work within the Swamp, small, slightly elevated mounded areas (at the direction of the DEM) may be created (at appropriate spacing), as needed, using high-organic plantable soil, on or within which tree and shrub plantings may be installed;
- (f) Plant trees and shrubs in all unauthorized cleared and altered areas within the Swamp as follows:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 15 feet on center, 4 feet tall after planting, throughout the area defined above. Tree species must include an equal distribution of at least 3 of the following selections:

Red maple, *Acer rubrum*
Black gum (Tupelo), *Nyssa sylvatica*
Green Ash, *Fraxinus pennsylvanica*

American elm, *Ulmus americana*
Silver maple, *Acer saccharinum*
Swamp white oak, *Quercus bicolor*
Pin oak, *Quercus palustris*
Red ash, *Fraxinus pennsylvanica*
Yellow Birch, *Betula allegheniensis*

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

Silky dogwood, *Cornus amomum*
Red osier dogwood, *Cornus stolonifera*
Arrowwood, *Viburnum dentatum*
Elderberry, *Sambucus canadensis*
Winterberry, *Ilex verticillata*
Highbush blueberry, *Vaccinium corymbosum*
Spice bush, *Lindera benzoin*
Swamp azalea, *Rhododendron viscosum*
Speckled alder, *Alnus rugosa*

- (g) Plant trees and shrubs in all unauthorized cleared and altered areas within the Perimeter Wetland as follows:

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

Pin Oak, *Quercus palustris*
Northern Red Oak, *Quercus rubra*
White Pine, *Pinus strobus*
Red maple, *Acer rubrum*
American holly, *Ilex opaca*
Gray Birch, *Betula populifolia*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion 7 feet on center, 3 feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least 4 of the following selections:

Silky dogwood, *Cornus amomum*
Highbush Blueberry, *Vaccinium corymbosum*
Red osier dogwood, *Cornus stolonifera*
Arrowwood, *Viburnum dentatum*

Wild raisin, *Viburnum cassinoides*
Elderberry, *Sambucus canadensis*
Inkberry, *Ilex glabra*
Speckled alder, *Alnus rugosa*
Witchhazel, *Hamamelis virginiana*

- (h) If any or all of the required plantings fail to survive at least 1 full year 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 1 full year.
 - (i) All disturbed surfaces within the restored Swamp must be seeded with a wetland wildlife conservation grass seed mixture, and stabilized with a mat of loose hay mulch. All disturbed surfaces within Perimeter Wetland must be covered with plantable soil/loam (if necessary), seeded with a wildlife conservation grass seed mixture, and stabilized with a mat of loose hay mulch.
 - (j) 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.
 - (k) 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.
 - (l) The above restoration work shall be completed prior to **September 15, 2016.**
- (3) Contact Ms. Shawna Smith at (401)-222-4700 ext. 7427 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 the 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:

\$10,000

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties* 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, cashier's 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 the Respondents 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, 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:

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 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 Lincoln 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) Joseph J. LoBianco at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Ms. Shawna Smith or Mr. Stephen Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-4700 extensions 7427 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

Date: _____

CERTIFICATION

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

Syed Husain
20 Red Brook Crossing
Lincoln, RI 02865

Sadia Husain
20 Red Brook Crossing
Lincoln, RI 02865

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS
 File No.: OCI-FW-15-117
 Respondents: Syed and Sadia Husain

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 a Swamp	Type I (\$5,000 Max. Penalty)*	Major	\$5,000	1 violation	\$5,000
D(1) and D(2) – Alteration of a Perimeter Wetland	Type I (\$5,000 Max. Penalty)*	Major	\$5,000	1 violation	\$5,000
<i>SUB-TOTAL</i>					\$10,000

*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>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 can not be quantified.</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 = \$10,000

PENALTY MATRIX WORKSHEET

CITATION: Alteration of a Swamp
 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		
<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'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 at least clearing, filling (with at least boulders and soil), creating soil disturbance, construction (of at least a fence, utilities, and a stone fire-pit), installation of a lawn, and landscaping within Swamp. 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 Swamp was previously undisturbed forest prior to the unauthorized alteration.</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 - at least 8 months. The DEM first documented the violation on 9 October 2015.</p> <p>(F) Areal extent of the violation: About 12,500 square feet.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to obtain the appropriate permit from the DEM to prevent the noncompliance and failed to take reasonable and appropriate steps to mitigate the noncompliance. On 30 September 2015, the DEM spoke to the Respondents in response to a complaint regarding alterations to freshwater wetlands on the property. The DEM advised the Respondents of the complaint and to cease work in wetlands. On 9 October 2015, the DEM inspected the property. During the inspection, the DEM inspector notified Mr. Husain of unauthorized alterations within freshwater wetlands. Mr. Husain was advised to stop working within the wetland areas, and he agreed to do so. On 16 October 2015, the DEM inspected the property in response to a complaint that work was continuing. The inspection revealed that additional unauthorized work was completed within wetlands. The DEM inspector issued a written cease and desist order to the contractor at the time of the inspection; however, at that time most of the work was completed. To date, no plan has been submitted to the DEM to restore the altered 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 project 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:** 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 \$5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000 \$5,000	\$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: Alteration of Perimeter Wetland

VIOLATION NO.: D (1) and (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'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, stumping, grubbing, filling (with at least boulders and soil), grading, soil disturbance, construction (of at least a fence, swing-set, and utilities, and portions of an in-ground pool and patio), installation of a lawn, and landscaping within at least Perimeter Wetland. 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 majority of the Perimeter Wetland was previously undisturbed forest prior to the unauthorized alteration.</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 - at least 8 months. The DEM first documented the violation on 9 October 2015.</p> <p>(F) Areal extent of the violation: About 7,600 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 obtain the appropriate permit from the DEM to prevent the noncompliance and failed to take reasonable and appropriate steps to mitigate the noncompliance. On 30 September 2015, the DEM spoke to the Respondents in response to a complaint regarding alterations to freshwater wetlands on the property. The DEM advised the Respondents of the complaint and to cease work in wetlands. On 9 October 2015, the DEM inspected the property. During the inspection, the DEM inspector notified Mr. Husain of unauthorized alterations within freshwater wetlands. Mr. Husain was advised to stop working within the wetland areas, and he agreed to do so. On 16 October 2015, the DEM inspected the property in response to a complaint that work was continuing. The inspection revealed that additional unauthorized work was completed within wetlands. The DEM inspector issued a written cease and desist order to the contractor at the time of the inspection; however, at that time most of the work was completed. To date, no plan has been submitted to the DEM to restore the altered 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 project 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:** 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 \$5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000 \$5,000	\$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