

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Carlo J. Izzo
Carlo J. Izzo, Jr.
Joanna Izzo**

FILE NOS.: OCI-WP-14-124

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

DEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondents on December 12, 2018 for the violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the violations. As of the date of the NOV, Respondents have failed to respond to or comply with the NIE.

C. Facts

- (1) The property is located at 2141 Plainfield Pike, identified as Assessor’s Plat 32, Lot 7, in the Town of Johnston, Rhode Island (the “Property”).
- (2) The Property is owned by Respondents and is designated as a farm in accordance with DEM’s Farmland Designation Program.
- (3) On January 23, 2018, October 29, 2018 and November 26, 2018, DEM inspected the Property and Plainfield Pike. The inspections revealed the following:
 - (a) turbid stormwater runoff flowing off the Property to the east and into a catch basin (the “Catch Basin”) located on Green Hill Road near its intersection with Plainfield Pike;
 - (b) a heavy layer of sediment carried by stormwater runoff from the Property to the east covering the road and Catch Basin grate at the intersection of Green Hill Road and Plainfield Pike;

- (c) turbid stormwater flowing (in a stream like manner) from the Property to the west and into a culvert pipe (the “Culvert Pipe”) located beneath Plainfield Pike;
 - (d) sediment laden runoff and sediment accumulation in the freshwater wetlands located on the south side of Plainfield Pike (the “Wetlands”) where the Catch Basin and Culvert Pipe both discharge;
 - (e) the sewage like odor of manure associated with the stormwater runoff;
 - (f) the stormwater runoff discharged from the Property caused the water in the Stream and Wetlands to become highly turbid, brown colored, and odorous; and
 - (g) that best management practices were not in use at the Property to prevent soil erosion and sedimentation of the receiving waters.
- (4) The Wetlands are hydraulically connected to and discharge to an unnamed tributary (the “Stream”) of Simmons Reservoir.
 - (5) The Stream is a Class B water pursuant to Part 1.25(J)(7) of the *Water Quality Regulations (250-RICR-150-05-1)* (the “Water Quality Regulations”).
 - (6) The Wetlands are Class B waters pursuant to Part 1.9(E)(3) of the Water Quality Regulations.
 - (7) The designated uses for Class B waters includes primary and secondary contact recreational activities and fish and wildlife habitat and these waters shall have good aesthetic value, pursuant to Part 1.9(B)(3) of the Water Quality Regulations.
 - (8) Class B waters shall be free of pollutants in concentrations or combinations that:
 - (a) Adversely affect the physical integrity of the habitat pursuant to Part 1.10(B)(1)(b) of the Water Quality Regulations; and
 - (b) Produce odor or change the color of the receiving water in such concentrations that adversely affect its existing or designated uses pursuant to Part 1.10(B)(2)(c) of the Water Quality Regulations.
 - (9) The stormwater runoff from the Property, containing sediment and exhibiting a sewage like odor, has adversely impacted the designated uses of the Stream for recreational activities and for fish and wildlife habitat and the aesthetic value of the Stream.
 - (10) Respondents do not have authorization to discharge pollutants from the Property in concentrations that adversely affect the Wetlands and Stream or the designated uses of these waters.

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 DEM.
- (2) **R.I. Gen. Laws Section 46-12-5(a)** – prohibiting the placement of any pollutant in a location where it is likely to enter the waters of the State.
- (3) **R.I. Gen. Laws Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (4) **Rhode Island Code of Regulations titled *Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act (250-RICR-150-15-1) Part 1.5(A)*** – prohibiting activities which may alter freshwater wetlands without a permit from DEM.
- (5) **Water Quality Regulations**
 - (a) **Part 1.10(B)(1)(b)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that adversely affect the physical integrity of the habitat.
 - (b) **Part 1.10(B)(2)(c)** - requiring that all waters of the State be free from pollutants in concentrations or combinations that produce odor or change the color of the receiving water to such a degree as to interfere with its designated uses.
 - (c) **Part 1.11(A)** — prohibiting the discharge of pollutants into any waters of the State or performing any activities alone or in combination which DEM determines will likely result in the violation of any State water quality criterion or interfere with one or more of the existing or designated uses assigned to the receiving waters or to downstream waters. In addition, Best Management Practices, as determined by DEM, shall be used to control erosion, sedimentation and runoff.
 - (d) **Part 1.13(B)** – prohibiting the discharge of pollutants into the waters of the State except as in compliance with the provisions of R.I. Gen. Laws Chapter 46-12, or other applicable chapters, of the Rhode Island General Laws or these regulations, and pursuant to the terms and conditions of an approval issued by DEM thereunder.
 - (e) **Part 1.15(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to waters of the State.

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) **Within 60 days of receipt of the NOV**, submit a Soil Management Plan and proposed project schedule to DEM's Division of Agriculture to control stormwater runoff from the Property in accordance with agricultural best management practices.
- (2) **Within 60 days of receipt of the NOV**, submit a plan to DEM's Office of Compliance and Inspection ("OC&I") prepared by a qualified wetland scientist to assess the impacts of sedimentation to the Wetlands and Stream (the "Sediment Assessment Plan"). The Sediment Assessment Plan must describe the method/s that will be used to estimate the extent of deposition of non-native soil including depth, type and area impacted and include a schedule for completion of the work.
- (3) **Within 30 days of OC&I's approval of the Sediment Assessment Plan**, initiate the work in the Sediment Assessment Plan and complete all work in accordance with the approved schedule.
- (4) **Within 30 days of completion of the work in subsection E (3) above**, submit a report of the findings of sediment assessment to OC&I (the "Sediment Assessment Report"). OC&I will review the Sediment Assessment Report and notify Respondents in writing whether Respondents need to prepare a restoration plan (the "Wetlands/Stream Restoration Plan"). The Wetland/Stream Restoration Plan shall describe the method/s that will be used to remove non-native soil from the Wetlands and Stream and provide a schedule for completion of the work. Within 60 days of notification by OC&I that the Wetland/Stream Restoration Plan is necessary, Respondents shall submit the Wetland/Stream Restoration Plan to OC&I.
- (5) The plans and reports required in subsections E (1), E (2) and E (4) above shall be subject to DEM's review and approval. Upon completing its review, DEM shall provide written notification to Respondents either granting approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies Respondents shall submit to DEM a modified report or additional information to correct the deficiencies.

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:

\$6,250

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the 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" and shall be forwarded to DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against 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.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if DEM determines that reasonable efforts have been made to comply promptly with the NOV.

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 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 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
235 Promenade Street, Room 350
Providence, RI 02908-5767

- (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 Part 1.7(B) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (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 regarding 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 Johnston, Rhode Island 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 46-12-9(c), 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 of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Patrick J, Hogan of DEM's Office of Compliance and Inspection at (401) 222-1360 extension 7119.

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, Administrator
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Carlo J. Izzo
2141 Plainfield Pike
Johnston, RI 02919-5600

Carlo J. Izzo, Jr.
2141 Plainfield Pike
Johnston, RI 02919-5600

Joanna Izzo
2141 Plainfield Pike
Johnston, RI 02919-5600

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File No.: OCI-WP-14-124
 Respondents: Carlo J. Izzo, Carlo J. Izzo, Jr. & Joanna Izzo

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 (5) Unauthorized discharge of a pollutant to waters of the State and unauthorized alteration of a freshwater wetland	Type I (\$25,000 Max. Penalty) *	Moderate	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$6,250

*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 COMPLY. 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 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 DEM 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 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 = \$6,250

PENALTY MATRIX WORKSHEET

CITATION: Unauthorized discharge of a pollutant to waters of the State and unauthorized alteration of a freshwater wetland

VIOLATION NOs.: D (1) – D (5)

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 Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to install soil erosion and sedimentation controls on the Property resulting in the discharge of pollutants (in the form of sediment and manure) from stormwater runoff to waters of the State. Prevention of pollutant discharges to waters of the State and unauthorized alterations to freshwater wetlands are primary goals of the regulatory programs. (2) Environmental conditions: The Property is an active farm located within the Simmons Reservoir watershed. The Wetlands, Stream and Simmons Reservoir are Class B waters. Class B waters are designated for primary and secondary contact recreational activities and for fish and wildlife habitat and shall have good aesthetic value. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Soil sediments and manure carried by stormwater runoff. These pollutants have the potential to impact the designated uses of the receiving waters. Manure contains potentially pathogenic bacteria that can be harmful to humans and other animals. (5) Duration of the violation: Ongoing. Full duration is unknown – at least 2½ years. Violation was documented by DEM on January 23, 2018, October 29, 2018 and November 26, 2018. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take any steps to prevent the noncompliance. The Respondent has not taken any steps to mitigate the noncompliance despite receiving the NOI from DEM requiring that they do so.
- (8) **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.
- (9) **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:** Respondents have full control over the farming operations and the violations.
- (10) **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
--------------	--------------------------	--------------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250