

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

**IN RE: William A. Mega**

**FILE NO.: FW C11-0142**

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

On December 8, 2011 and June 28, 2012 DEM issued informal written notices to the Respondent for the violations. The notices required specific actions to correct the violations. To date, the Respondent has failed to comply with the notices.

C. Facts

- (1) The subject property is located along a dirt drive that begins approximately 300 feet north of the intersection of Miskiania Trail and South County Trail and extends approximately 1,700 feet to the east, Assessor’s Plat 76, Block 4, Lot 1 in the town of Exeter, Rhode Island (the “Property”).
- (2) The Respondent owns the Property.
- (3) DEM inspected the Property on October 11, 2011. The inspection and subsequent review of DEM’s records revealed the following:
  - (a) Excavating, clearing, and filling (in the form of boulders) within a Bog. This activity resulted in the alteration of approximately 30,000 square feet of freshwater wetland.
  - (b) Clearing and filling within Perimeter Wetland. This activity resulted in the alteration of approximately 36,000 square feet of freshwater wetland.
- (4) The Respondent did not receive approval from DEM to alter the freshwater wetlands on the Property in the areas 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 for 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) **By October 15, 2013** 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 any remaining 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 any and all freshwater wetlands.
- (b) Remove all boulders lining the excavated Bog to a location outside of any and all freshwater wetlands.
- (c) Replace the original excavated spoils back into the Bog at the direction of DEM. If the excavated spoils are no longer available, high-organic plantable soil must be applied to re-establish the correct Bog elevation and hydrologic regime. A wetland seed mix must be applied to the surface areas of the restored Bog.
- (d) All slopes resulting from the removal of the boulders and placement of high-organic plantable soil must be graded back to a stable slope and all disturbed soil within fifty (50) feet of the restored Bog must be planted with a wildlife conservation seed mix and covered with a mat of spread hay mulch.

- (e) All areas that were cleared within the Perimeter Wetland must be replanted with trees and shrubs as required below:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, ten (10) feet on center, four (4) feet tall after planting, throughout the areas defined above. Tree species must 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*  
Black birch, *Betula lenta*

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

Mountain laurel, *Kalmia latifolia*  
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*  
Highbush blueberry, *Vaccinium corymbosum*  
Lowbush blueberry, *Vaccinium angustifolium*  
Sweet pepperbush, *Clethra alnifolia*  
Bayberry, *Myrica pennsylvanica*  
Black chokeberry, *Aronia melanocarpa*  
Witchhazel, *Hamamelis virginiana*

- (f) If any or all of the required plantings fail to survive at least one (1) year from the time that planting has been verified by DEM, the same plant species shall be replanted and maintained until such time that survival is maintained over one (1) full year.
- (g) All restored freshwater wetland areas, including replanted areas, must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations are authorized in any wetland area on the subject property without first obtaining a permit from DEM.

- (3) Contact Mr. Bruce Ahern at DEM (401)222-4700 ext. 7703 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 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:

**Nine Thousand Dollars (\$9,000.00)**

- (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 thirty (30) 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 Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the Respondent 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 0 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 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, 2<sup>ND</sup> Floor  
Providence, RI 02908

- (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:
- Richard M. Bianculli Jr., 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 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 Exeter to be recorded in the 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) Richard Bianculli at the DEM Office of Legal Services at 401-222-6607. All other inquiries should be directed to Mr. Bruce Ahern or Mr. Harold Ellis of the DEM Office of Compliance and Inspection at 401-222-4700 exts. 7703 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 \_\_\_\_\_  
the within Notice of Violation was forwarded to:

William A. Mega  
740B South County Trail  
Exeter, RI 02816

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS  
File No.: FW C11-0142  
Respondent: William A. Mega

<b>GRAVITY OF VIOLATION</b> 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 a Bog	Type I (\$5,000 Max. Penalty)*	Major	\$5,000	1 violation	\$5,000.00
D(1) and (2) – Alteration of Perimeter Wetland	Type I (\$5,000 Max. Penalty)*	Major	\$4,000	1 violation	\$4,000.00
<b>SUB-TOTAL</b>					<b>\$9,000.00</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 the 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 can not 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 = \$9,000.00**

# PENALTY MATRIX WORKSHEET

CITATION: Alteration of a Bog  
 VIOLATION NO.: D (1) and (2)

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 *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent altered freshwater wetlands through extensive clearing, excavating, and filling (in the form of boulders) within a Bog. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.
- (B) **Environmental conditions:** The wetland was an undisturbed mature forested Bog until it was altered by the Respondent. All trees, shrubs, and sphagnum substrate within the wetland was removed to create an open water area. The entire Bog was eliminated.
- (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. RI ArcGIS explorer online imagery reveals that the unauthorized work occurred between 2008 and 2011. The unauthorized alteration was first observed by DEM on October 11, 2011.
- (F) **Areal extent of the violation:** The aerial extent of the violation is approximately 30,000 square feet.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to obtain the appropriate permit from DEM. Respondent was issued informal written notices by DEM on December 8, 2011 and June 28, 2012 and was required to restore the wetlands. The Respondent has failed to comply with the notices.
- (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 Respondent had complete control over the occurrence of the violation and had an obligation to apply for a permit from DEM.
- (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	<b>MAJOR</b>	\$2,500 to \$5,000 <b>\$5,000</b>	\$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 a 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.	<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 *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent altered freshwater wetlands through extensive clearing and filling in a Perimeter Wetland (that area of land within 50 feet of a Bog). The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.
- (B) **Environmental conditions:** The majority of the Perimeter Wetland was previously an undisturbed mature forested area surrounding the Bog until it was altered by the Respondent. The area was cleared and the excavated material from the Bog was piled in the Perimeter Wetland.
- (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. RI ArcGIS explorer online imagery reveals that the unauthorized work occurred between 2008 and 2011. The unauthorized alteration was first observed by DEM on October 11, 2011.
- (F) **Areal extent of the violation:** The aerial extent of the violation is approximately 36,000 square feet.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to obtain the appropriate permit from DEM.
- (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 Respondent had complete control over the occurrence of the violation and had an obligation to apply for a permit from DEM.
- (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	<b>MAJOR</b>	\$2,500 to \$5,000 <b>\$4,000</b>	\$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