

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

**IN RE: WIND ENERGY DEVELOPMENT  
HOLDINGS, LLC  
dba Wind Energy Development, LLC**

**FILE NO.: OCI-FW-17-52**

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 DEM's jurisdiction.

B. Facts

- (1) The property is located approximately 100 feet southwest of the cul-de-sac at the southern terminus of the paved portion of West Log Bridge Road and approximately 2,300 feet southwest of its intersection with Perry Hill Road, at the northern-most portion of the unimproved portion of West Log Bridge Road right of way, Town of Coventry right of way in the Town of Coventry, Rhode Island (the “Property”).
- (2) The Town of Coventry owns the Property.
- (3) On 2 July 2015, DEM’s Office of Customer and Technical Assistance (“OCTA”) issued a letter to Wind Energy Development, LLC (“WED”) as a follow up to a pre-application meeting that was held on 23 June 2015 between DEM and WED. The letter stated that WED would file a Request for Regulatory Applicability to confirm that the work associated with the construction of the electrical conduit that is the subject of this Notice of Violation (“NOV”) is exempt in accordance with the Rhode Island Code of Regulations titled *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1)* (the “Wetland Rules”).
- (4) On 4 August 2015, a freshwater wetland permit application was submitted to DEM’s Office of Water Resources (“OWR”) signed by Mark DePasquale, president of WED.
- (5) On 20 November 2015, OWR issued a letter to WED as a follow up to a meeting to discuss the application. The letter stated that all work associated with the construction of the electrical conduit must be included in the application.

- (6) On 1 February 2016, OWR received electronic correspondence from WED's attorney. The correspondence stated that WED intended to construct the electrical conduit in accordance with DEM's requirements for an exempt activity.
- (7) On 11 April 2017, 2 June 2017 and 29 March 2018, DEM's Office of Compliance and Inspection ("OC&I") inspected the Property. The inspections revealed the following:
  - (a) Upgrading of and installing an underground electrical conduit within an unimproved town "road" (the "Road") resulting in clearing, filling (in the form of at least rip rap, wood chips, filter fabric, soil material, boulders and gravel) and grading within Swamp (portions of which include Riverbank Wetland). These activities resulted in the alteration of approximately 2,500 square feet of freshwater wetland;
  - (b) Upgrading of and installing an underground electrical conduit within the Road resulting in clearing, filling (in the form of at least rip rap, wood chips, filter fabric, soil material, boulders and gravel) and grading within Perimeter Wetland located near the southern portion of the Road. These activities resulted in the alteration of approximately 250 square feet of freshwater wetland; and
  - (c) Upgrading of and installing an underground electrical conduit within the Road resulting in clearing, filling (in the form of at least rip rap, wood chips, filter fabric, soil material, boulders and gravel) and grading within a Perimeter Wetland located near the northern portion of the Road, along with constructing a drainage swale that directs storm water into the wetlands. These activities resulted in the alteration of approximately 100 square feet of freshwater wetland.
- (8) The activities described in subsection C(7) above are not exempt in accordance with Part 1.6 of the Wetland Rules.
- (9) Respondent did not receive a permit from DEM to alter the freshwater wetlands on the Property.

C. 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) **Wetland Rules, Part 1.5(A)** – prohibiting activities which may alter freshwater wetlands without a permit from DEM.

D. 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 **by 31 May 2020**, either return the Road to its pre-altered condition at the direction and limits established by OC&I **OR** obtain a permit from OWR for the alterations to freshwater wetlands that occurred and fully comply with the requirements of the permit.

E. 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 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 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 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.

F. 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 E 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:

Tricia Quest, 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 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) 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) Tricia Quest of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David Chopy of DEM's Office of Compliance and Inspection at (401) 222-1360 extension 7400.

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 F above.

FOR THE DIRECTOR

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

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



# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS  
 File No.: OCI-FW-17-52  
 Respondent: WIND ENERGY DEVELOPMENT HOLDINGS, LLC dba Wind Energy Development, LLC

## 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	
C (1) and C (2) Alteration Of Wetlands Without A Permit	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
<b><i>SUB-TOTAL</i></b>					<b>\$10,000</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 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 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 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 = \$10,000**

# PENALTY MATRIX WORKSHEET

CITATION: Alteration Of Wetlands Without A Permit  
 VIOLATION NO.: C (1) and C (2)

TYPE		
<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.

**DEVIATION FROM THE STANDARD**  
 THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

**FACTORS CONSIDERED:**

Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent altered freshwater wetlands by clearing, filling (in the form of at least rip rap, wood chips, filter fabric, soil material, boulders and gravel) and grading within Swamp and Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.
- (2) **Environmental conditions:** The Swamp and Perimeter Wetland was undisturbed prior to the unauthorized alteration.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (5) **Duration of the violation:** Full duration unknown – at least 29 months. DEM first documented the violation on 2 June 2017.
- (6) **Areal extent of the violation:** 2,850 square feet.

(continued)

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance.
- (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:** On 30 October 2017, DEM issued a Notice of Violation to WED for failing to comply with a permit for activities that were performed within freshwater wetlands on the southern portion of West Log Bridge Road.
- (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:** Respondent had complete control over the project, knowledge of the type and location of the wetlands on the Property and had an obligation to protect the wetlands. On 2 July 2015, OCTA issued a letter to WED as a follow up to a pre-application meeting that was held on 23 June 2015 between the DEM and WED. The letter stated that the proposed work regarding West Log Bridge Road required submission of a freshwater wetlands permit application. On 4 August 2015, a freshwater wetland permit application was submitted to OWR signed by Mark DePasquale, president of WED. On 20 November 2015, OWR issued a letter to WED as a follow up to a meeting to discuss the application. The letter stated that all work associated with the construction of the electrical conduit must be included in the application. On 1 February 2016, OWR received electronic correspondence from WED's attorney. The correspondence stated that WED intended to construct the electrical conduit in accordance with DEM's requirements for an exempt activity; however, WED failed to do so.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Freshwater Wetlands Act allows DEM to assess a penalty for each separate and distinct violation up to a maximum of \$10,000 for violations that are knowing. DEM could have assessed a maximum penalty of \$10,000 for each violation; however, for ease of drafting, DEM decided to assess a single penalty for all 3 violations.

<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