

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

RE: SABATINO & CAROL CORRADO
FRESHWATER WETLANDS ENFORCEMENT NO. C92-0198V
AAD NO. 92-046/FWE

ORDER

This matter is before the hearing officer on the Motion for Partial Summary Judgment filed by the Division of Freshwater Wetlands. The Respondent objected to the Motion and Oral Argument was heard on June 25, 1993.

The Division seeks partial summary judgment on the issues of liability and restoration leaving the penalty issue for hearing. As the moving party, the Division must demonstrate by affidavit and other documentary evidence before this administrative tribunal that it is entitled to judgment as a matter of law and that there exist no genuine issues of material fact. Palmisciano v. Burrillville Racing Assn., 603 A.2d 317 (R.I. 1992).

Upon deciding this motion for summary judgment, it is incumbent upon me to conduct an examination of the pleadings, affidavits, stipulations, admissions and other appropriate evidence in the light most favorable to Respondent. Commercial Union Companies v. Graham, 945 A.2d 243, (R.I. 1985). Thereafter, summary judgment may only be granted if such review determines that no issue of material fact exists and the moving party is entitled to judgment as a matter of law. Blanchard v. Blanchard, 484 A.2d 904 (R.I. 1984).

Respondent bears the burden of proving with competent evidence the existence of a disputed material fact and cannot rest upon mere denials, conclusions or legal opinions. Manning Auto Parts, Inc. v. Souza, 591 A.2d 34 (R.I. 1991). The party opposing summary judgment must assert facts that raise a genuine issue to be resolved. Sup. Ct. R. Civ. P. Rule 56, Holliston Mills, Inc. v. Citizens Trust Co., 604 A.2d 331 (R.I. 1992).

The Rhode Island Supreme Court has directed that the decision maker must take cognizance of the fact that a summary judgment motion is a drastic and dispositive remedy and should be granted with caution. Regnier v. Cahill, 618 A.2d 1266 (R.I. 1993).

A review of the pleadings, affidavits, stipulations and admissions and arguments of counsel at the motion hearing viewed in the light most favorable to Respondent, establish genuine issues of material fact warranting a hearing. Therefore, it is

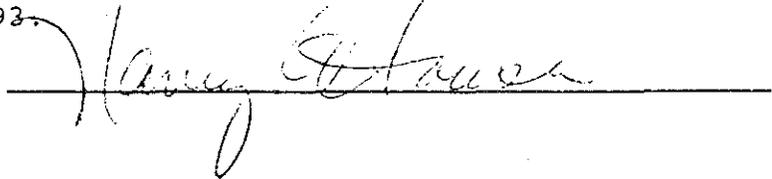
ORDERED

1. The Division's Motion for Partial Summary Judgment is DENIED.
2. The prehearing conference has been completed and the Clerk is instructed to place this matter on the hearing schedule.

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CERTIFICATION

I hereby certify that I caused a true copy of the within order to be forwarded, via regular mail, postage prepaid to Vincent J. Oddo, Esq., 165 Atwells Ave., Providence, RI 02903 and via interoffice mail to Mary Shekarchi, Esq., Office Legal Services, 9 Hayes Street, Providence, RI 02908 on this 2th day of November, 1993.



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Entered as an Administrative Order this 12th day of
November, 1993.

Kathleen M. Lanphear

Kathleen M. Lanphear
Chief Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, Third Floor
Providence, Rhode Island 02908

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