

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

IN RE: Jennifer Cosgrove

FILE NO.: OCI-FW-20-244

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 Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On 3 September 2021, RIDEM issued a Notice of Intent to Enforce (“NIE”) to Respondent by certified mail for the violation that is the subject of this Notice of Violation (“NOV”). The NIE advised Respondent of the specific actions required to correct the violation. On 7 September 2021, the NIE was delivered. On September 28, 2021, RIDEM received electronic correspondence from Respondent’s attorney in response to the NIE. The attorney stated that Respondent wanted to explore an informal resolution to the violation. RIDEM did not receive any further communication from Respondent or her attorney. On June 7, 2022, RIDEM issued a letter to Respondent (“June Letter”) by certified mail. The June Letter advised Respondent that the NIE was unresolved and that if action was not taken to correct the violation, RIDEM may take additional enforcement action. On 10 June 2022, the June Letter was delivered. As of the date of the NOV, RIDEM has not received a response to the June Letter and Respondent has not complied with the NIE.

C. FACTS

- (1) The property is located approximately 185 feet south of Middle Road, generally west of the dwelling at 160 Middle Road, approximately 300 feet southwest of the intersection of Middle Road and Ridgefield Drive, Assessor’s Plat 8, Lot 68 in East Greenwich, Rhode Island (“Property”).
- (2) On 5 February 2003, RIDEM issued an Insignificant Alteration Permit (“Permit”) to alter freshwater wetlands on the Property to construct a residential dwelling. The Permit included approved plans showing the location of the freshwater wetlands on the Property.

- (3) On 7 February 2003, the Permit was recorded in the land evidence records of the Town of East Greenwich at Book 543, Page 14.
- (4) On 27 March 2006, RIDEM determined that all the work required in the Permit was complete and closed its file.
- (5) Respondent formerly owned the Property. Respondent owned the Property from 27 April 2018 to on or about 31 January 2020.
- (6) Joseph Dymek and Lisa Dymek currently own the Property (“Owners”). The Owners acquired the Property on or about 31 January 2020.
- (7) On 1 December 2020, RIDEM received a complaint regarding clearing of trees and filling in wetlands on the Property.
- (8) On 11 December 2020 and 12 May 2022, RIDEM inspected the Property. The inspection revealed clearing, stumping/grubbing, filling (in the form of soil material), grading and creating/maintaining lawn within Forested Wetland (“Forested Wetland”). These activities resulted in the unauthorized alteration of approximately 7,000 square feet of the Forested Wetland.
- (9) RIDEM’s review of aerial photographs revealed that the activities described in subsection C (8) above occurred between April 2019 and July 2019.
- (10) The activities described in subsection C (8) above were not exempt in accordance with Part 3.6 (formerly Part 1.6) of Rhode Island’s *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (250-RICR-150-15-3) (formerly 250-RICR-150-15-1) (“FWW Rules”).
- (11) Respondent did not receive a permit from RIDEM to alter the Forested Wetland.
- (12) As of the date of the NOV, Respondent has failed to restore the Forested Wetland.

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 RIDEM.
- (2) **FWW Rules, Part 3.5.5(A) (formerly Part 1.5(A)(1))** – prohibiting activities which may alter freshwater wetlands without a permit from RIDEM.

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) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) Install (in a proper manner) appropriate soil erosion/sediment controls (“ESCs”) (e.g., staked haybales and/or staked-in straw wattles/coir logs/coconut fiber logs) along the northern limits of all unauthorized altered portions of the Forested Wetland (i.e., along the edge of the existing unauthorized lawn areas), between all altered areas and the adjacent undisturbed wetland areas. The ESCs must be regularly inspected and properly and continually maintained (and replaced, if necessary) prior to, during, and following the completion of the required wetland restoration, and until such time that all surrounding areas are properly stabilized. At the discretion and direction of RIDEM, additional ESCs must be installed, as deemed necessary, to protect all freshwater wetlands.
- (b) Remove all unauthorized fill material (including but not limited to all lawn components, landscaping amenities, and soil material) from the affected portions of the Forested Wetland. Fill must be removed down to original grade of the Forested Wetland, to match the elevations of the adjacent undisturbed wetlands. Prior to proceeding to the next restoration step, all areas of concern where fill has been removed must first be inspected by RIDEM to confirm that the correct restoration grades have been achieved and an adequate surface substrate material is present. If the original wetland (organic/hydric) surface soil is not present within the Forested Wetland following fill removal, then at the discretion and direction of RIDEM, the following procedure must be utilized.
 - (i) An additional 6 inches of soil material must be excavated from the affected portions of the Forested Wetland (below original grade) to ensure that the proper hydrology is achieved at the completion of the restoration work.
 - (ii) A minimum of 6 inches of high-organic plantable soil must then be applied throughout the affected (excavated/restored) portions of the Forested Wetland to achieve the final desired wetland surface grade, which should match the elevations of any adjacent remaining undisturbed wetland.

All removed fill materials must be deposited in an appropriate upland location, outside of all freshwater wetlands. It is reiterated here that, following the completion of this restoration step, and prior to proceeding with the remainder of the restoration activities outlined below, RIDEM must be notified to allow for an inspection to determine that restoration surface grades are correct, exposed soils are adequate (for seeding/planting), and surface hydrology is appropriate.

- (c) All restoration work within the Forested Wetland must be undertaken during an acceptable “low-flow” period (generally July 1 - October 31), during which surface water in the Forested Wetland is sufficiently low to allow for the required restoration.
- (d) Providing exposed soils are present (i.e., surfaces are not inundated with water) following completion of the restoration activities described above, all resulting disturbed surface areas within the restored Forested Wetland must be seeded with an appropriate wetland seed mixture and a thick mat of spread straw mulch, which is free of any contaminants that could promote the spread of invasive plant species, must be applied over all the disturbed surfaces within the restored Forested Wetland.
- (e) Plant trees and shrubs within all portions of the Forested Wetland, at the direction and discretion of RIDEM. The required restoration plantings must be obtained from nursery stock that has been raised in hydric conditions. If necessary, to improve survivability, required tree and shrub plantings may be installed within small, raised mounds (slightly elevated only) of high-organic plantable soil material (only). Trees and shrubs must be installed as follows:
 - (i) Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, 4 to 5 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*
Silver Maple, *Acer saccharinum*
Black gum, *Nyssa sylvatica*
Green ash, *Fraxinus pennsylvanica*
Swamp white oak, *Quercus bicolor*
Pin oak, *Quercus palustris*
American elm, *Ulmus americana*
Sycamore, *Platanus occidentalis*
Black willow, *Salix nigra*

Yellow birch, *Betula allegheniensis*

- (ii) Balled and burlapped, potted, or transplanted shrub species must be planted in an interspersed fashion 5 feet on center, at least 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:

Red osier dogwood, *Cornus stolonifera*
Elderberry, *Sambucus canadensis*
Northern arrowwood, *Viburnum recognitum*
Winterberry, *Ilex verticillata*
Highbush blueberry, *Vaccinium corymbosum*
Spicebush, *Lindera benzoin*
Swamp azalea, *Rhododendron viscosum*
Speckled alder, *Alnus rugosa*
Smooth alder, *Alnus serrulata*
Red chokeberry, *Aronia arbutifolia*
Buttonbush, *Cephalanthus occidentalis*
Maleberry, *Lyonia lingustrina*
Swamp Rose, *Rosa palustris*

- (iii) Balled and burlapped or transplanted evergreen screening trees must be planted in a straight line, 8 feet on-center, 5 feet tall after planting, just outside of the outermost (landward) edge of the restored Forested Wetland (i.e., at the limit of final restoration). Screening tree species must include an equal distribution of at least 2 of the following selections:

White pine, *Pinus strobus*
Eastern hemlock (disease-resistant strain), *Tsuga canadensis*
Northern white cedar, *Tsuga occidentalis*
White spruce, *Picea glauca*

- (f) Following the completion of the wetland restoration, as described in subsection (a) through (e) above, install appropriate identifying markers just outside of the planted evergreen screening tree line (in the restoration area), along the entire outer (eastern)/landward edge of the Forested Wetland (to include both the previously existing/intact wetland and the restored wetland). Acceptable permanent marker posts may include 4 inch x 4 inch pressure-treated timber posts, galvanized fence posts (with a cap), or granite/concrete bounds, and must extend at least 36 inches above the existing surface grade. A permanent-type tag or sign, labeled "RIDEM Regulated Wetland", must be affixed to each marker post. These buffer zone markers must be installed at both the northern and southern Property

boundaries and 25 feet on-center (apart) along the entire length of the area described above.

- (g) If any or all the required plantings fail to survive at least 1 full year from the time they have been planted, replant and maintain the same plant species until such time that survival is maintained over 1 full year.
- (h) **All restored freshwater wetland areas must be allowed to revert to a natural wild condition.** Aside from those activities considered exempt under Part 3.6 of the FWW Rules, **no future clearing, mowing, cutting, trimming, or other alterations are authorized in any wetland area on the Property without first obtaining a valid permit from RIDEM.**
- (i) The above restoration work must be completed on or before **31 October 2023**.

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 Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Rules") and must be paid to RIDEM within 30 days of your receipt of the NOV.
- (3) Penalty payments shall be by one of two methods:
 - (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767
 - (b) By wire transfer in accordance with instructions provided by RIDEM.
- (4) 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.

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 RIDEM'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 RIDEM'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
RIDEM - Administrative Adjudication Division
235 Promenade Street, Suite 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).
 - (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 Rhode Island's *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:

Jenna Giguere, Esquire
RIDEM - 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 RIDEM'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 Town of East Greenwich, Rhode Island 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) Jenna Giguere of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772306 or at jenna.giguere@dem.ri.gov. All other inquiries should be directed to David E. Chopy of RIDEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777400 or at david.chopy@dem.ri.gov.

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
RIDEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Jennifer Cosgrove
202 First Avenue
East Greenwich, RI 02818

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Freshwater Wetlands
 File No.: OCI-FW-20-244
 Respondent: Jennifer Cosgrove

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) Wetland Alterations to Forested Wetland- Fact C (8)	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
<i>SUB-TOTAL</i>					\$10,000

*Maximum Penalties represent the maximum penalty amounts 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 enjoyed an identifiable benefit from the noncompliance alleged in this enforcement action; however, the amount of economic benefit 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 RIDEM 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 RULES = \$10,000

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to Forested Wetland – Fact C (8)

VIOLATION NOs.: D (1) and D (2)

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		
<small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent altered freshwater wetlands by clearing, stumping/grubbing, filling (in the form of soil material), grading and creating/maintaining lawn within Forested Wetland. (2) Environmental conditions: The Forested Wetland on the Property is approximately 13,000 square feet. A portion of this wetland has never been disturbed and is comprised of mature red maple, sweet pepperbush, hydrophytic plants and hydric soils. Another portion of this wetland was previously altered by a former owner and was restored. That portion of the wetland is densely vegetated with small to medium size trees and mature shrubs. The portion of the wetland that is the subject of the NOV was covered with large trees and shrubs and herbaceous growth (naturally vegetated) prior to the alterations. This portion of the wetland is being maintained as lawn. (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 3 1/2 years based on a review of July 2019 aerial photographs showing some of the alterations present. (6) Areal extent of the violation: Approximately 7,000 square feet. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent has not taken reasonable and appropriate steps to prevent and/or mitigate the noncompliance. Respondent failed to obtain a permit from RIDEM and failed to restore the altered wetlands, despite receiving the NIE and July Letter from RIDEM requiring her to do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM 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:** Respondent had complete control over the project. The Permit was recorded, and thus Respondent knew or should have known that freshwater wetlands were present on the Property and that a permit from RIDEM was required to alter the freshwater wetlands.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Current Owners informed RIDEM's inspector that prior to the sale of the Property, Respondent advised them that "North Eastern Tree Service had acquired the appropriate permits before performing the work onsite". Respondent had a duty to ensure that Respondent's agents complied with the applicable laws and failed to do so.

<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	MAJOR	\$5,000 to \$10,000 \$10,000	\$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