

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

IN RE: Stephen Fuoroli
Notice of Violation No. C90-0082

DECISION AND ORDER

This matter came for hearing before Hearing Officer McMahon on November 12, 1991. At said hearing, the Division of Freshwater Wetlands and Respondent Fuoroli represented that they were prepared to enter into a Consent Agreement. Richard A. Lee, as intervenor and present owner of the property subject to the Notice of Violation, objected. Memoranda of law were filed by the Division's attorney and counsel for intervenor. Respondent declined to file a Memorandum on the issue set forth below.

History

On April 16, 1990 a Notice of Violation and Order (NOVAO) was issued to Richard A. Lee as the owner of record of the property located west of Molasses-Hazard Road, at Pole # 1362, west of Route 102, Assessor's Plat 40, Lot 5 in the Town of West Greenwich, Rhode Island. On June 26, 1990 an Amended Notice of Violation and Order was issued to Mr. Lee as well as to Stephen and Sharon Fuoroli alleging that the Fuorolis, as previous owners of the property, did accomplish or permit alterations of freshwater wetlands.

A year later, the Division released the NOVAO against Mr. Lee and issued a Revised Amended NOVAO to the remaining Respondents, Stephen and Sharon Fuoroli. On October 2, 1991 Richard A. Lee's Motion to Intervene was granted.

Issue

Neal Haber, as attorney for the present owner of the property, argues that Mr. Lee purchased the property without notice of the violation and that the jurisdiction of the Department of Environmental Management is limited by statute to cite, fine and require restoration only from violators and those who take title to the land after an NOV has been recorded in the Land Evidence records.

DECISION AND ORDER

In reviewing intervenor's equity arguments, I note that the Adjudication Division is without jurisdiction to consider same. John Huling, Sr., AAD No. C89-0168 (Respondent's Motion for Sanctions denied 03/23/92). Nor can this forum provide injunctive relief. John Travassos, AAD No. 91-020/FWA (Applicant's Motion to Compel denied 03/27/92). We are further without jurisdiction to consider any constitutional due process arguments which may be presented in such a case. Richard and Anita Ally, AAD No. C-1915 (Decision and Order on Motions by Respondent and the Department of Environmental Management

entered 11/05/91). Our clear jurisdiction is to interpret and apply such statutory and regulatory provisions which may arise in a particular matter.

Intervenor argues that a purchaser takes title to property free and clear of all unrecorded liens and thus cannot be required by DEM to restore freshwater wetlands or to pay an administrative penalty. Intervenor's Hearing Brief, pp. 2, 3. This conclusion, however, relies upon a misstatement of the facts in this case. The Revised and Amended Notice of Violation and Order is against the Fuorolis and seeks to have them restore the area and pay the penalty; while it undoubtedly affects Mr. Lee's property, he is not responsible for compliance with the NOVAO.

R.I.G.L. § 2-1-23 clearly empowers the Department

"to order complete restoration of the fresh water wetland area involved by the person or agent responsible for the violation. If the responsible person or agent does not complete the restoration within a reasonable time . . . the director shall have the authority to order the work done by an agent of his choosing and the person or agent responsible for the original violation shall be held liable for the cost of the restoration."

The Rhode Island Supreme Court has held that when the language contained in a particular statute is "free from ambiguity and expresses a definite and sensible meaning", that meaning is conclusively presumed to be the one which the

legislature intended to convey, and, in such circumstances, that statute should be interpreted literally. N. E. Die Co. v. General Products Co., Inc. 92 RI 292, 297 (1961).


I perceive no ambiguity in the above statute: the Department has complied with its terms by seeking restoration from the persons responsible for the alleged violation--the Fuorolis. If they are not allowed on the property to comply with an order of the Director, then obviously they will not be able to "complete the restoration within a reasonable time" and the Director can hire a contractor to complete the restoration. The Fuorolis would be responsible for paying the bill.

Alternatively, if the NOV had been recorded prior to the purchase of the property by Mr. Lee, then R.I.G.L. § 2-1-24 would apply and, as the subsequent transferee with notice, he would have been "responsible for complying with the requirements of the order or notice."

Therefore, in reviewing the memoranda of law filed by the parties and the pertinent statutory provisions and case law, I find that the action of the Division of Freshwater Wetlands was consistent with applicable law. Intervenor's request that the NOV be removed and that the Department be ordered to cease and desist any further action against Mr. Lee or his property is DENIED.

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Entered as an Administrative Order this 20th day of April,
1992.



Mary F. McMahon
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, 4th Floor
Providence, RI 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Decision and Order to be forwarded via regular mail, postage prepaid to Neal R. Haber, Esq., 200 Centerville Road, Warwick, RI 02886; David Borts, Esq., 100 Lafayette Street, Pawtucket, RI 02860 and via interoffice mail to Catherine Robinson Hall, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 6th day of May, 1992.