

**STATE OF RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: PADULA BUILDERS, INC.**

**FILE NOs.: OCI-FW-21-114  
and FWW Application 20-0133**

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. Administrative History

On 2 August 2021, DEM issued an Expedited Citation Notice (“ECN”) to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). The ECN required specific actions to correct the violations and payment of an administrative penalty of \$5,000. On 19 August 2021, DEM received a letter from Respondent’s attorney, Thomas Cronin in response to the ECN. The letter requested an immediate conference with DEM to resolve the matter. Respondent complied with the restoration requirements of the ECN but failed to pay the administrative penalty. On 15 November 2021, DEM sent electronic correspondence to Stephen Padula, the president of the company, and Attorney Cronin regarding the penalty. The correspondence stated that compliance with the ECN is voluntary, and that by statute the ECN expires after 60 days; however, failure to comply may result in the issuance of a NOV. DEM received no response to the correspondence, and Respondent did not pay the administrative penalty.

C. Facts

- (1) The property is located approximately 85 feet southeast from East Greenwich Avenue at Utility Pole #9098 and approximately 265 feet southwest from the intersection of East Greenwich Avenue and Dogwood Drive, Assessor's Plat 30, Lot 17 in West Warwick, Rhode Island (the “Property”).
- (2) On 29 July 2020, DEM issued Respondent a determination letter (application number 20-0133) consisting of an approved plan and conditions (the “Determination Letter”).

- (3) The Determination Letter required Respondent to:
  - (a) Install permanent buffer zone markers along the limit of disturbance (“LOD”) prior to commencement of any site alterations.
  - (b) Install erosion and sediment controls (“ESC”) along the LOD prior to the commencement of any site alterations.
  - (c) Not perform any grading or site alterations beyond the LOD without first obtaining a permit from DEM.
- (4) On 29 June 2021, DEM received a complaint of clearing in a wetland buffer on the Property.
- (5) On 2 July 2021, DEM inspected the Property. The inspection revealed the following:
  - (a) Clearing, stumping, filling (in the form of at least wood chips) and creating surface disturbance within Perimeter Wetland beyond the LOD. This activity resulted in the alteration of approximately 8,000 square feet of freshwater wetland.
  - (b) No buffer zones markers were installed along the LOD.
  - (c) No ESC were installed along the LOD.
- (6) On 30 September 2021 and 16 November 2021, DEM inspected the Property. The inspections revealed that Respondent restored the Perimeter Wetland and properly installed the buffer zone markers and ESC along the LOD to DEM’s satisfaction.
- (7) DEM did not issue a permit to Respondent to perform the activities described in subsection C(5)(a) above.
- (8) The inspections findings described in subsection C (5) did not comply with the Determination Letter.

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 DEM.
- (2) **Rhode Island’s Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act [effective 16 July 2014 to 4 January 2022], Part 1.5(A)** – prohibiting activities which may alter freshwater wetlands without a permit from DEM.

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:

**\$5,000**

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* [effective 4 January 2022 to Current] (the "Penalty Regulations") and must be paid to DEM within 30 days of your receipt of the NOV. 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, DEM Office of Compliance and Inspection  
235 Promenade Street, Suite 220  
Providence, RI 02908-5767

- (b) By wire transfer in accordance with instructions provided by DEM.

- (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).
  - (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* [effective 4 January 2022 to Current].
- (2) A copy of each request for hearing must also be forwarded to:
- Christina Hoefsmit, 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) Christina Hoefsmit of DEM's Office of Legal Services at (401) 222-6607 or at [christina.hoefsmit@dem.ri.gov](mailto:christina.hoefsmit@dem.ri.gov). All other inquiries should be directed to David E. Chopy of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777400 or at [david.chopy@dem.ri.gov](mailto: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 F above.

FOR THE DIRECTOR

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

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

CERTIFICATION

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

PADULA BUILDERS, INC.  
c/o John S. Brunero, Jr., Registered Agent  
1070 Main Street  
Coventry, RI 02816

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS  
 File Nos.: OCI-FW-21-114 and FWW Application 20-0133  
 Respondent: PADULA BUILDERS, INC.

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) – Alteration of Wetlands	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$5,000	1 violation	\$5,000
<b>SUB-TOTAL</b>					<b>\$5,000</b>

\*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 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 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= \$5,000**

# PENALTY MATRIX WORKSHEET

CITATION: Alteration of Wetlands  
 VIOLATION NOs.: D (1) and D (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.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by clearing, stumping, filling (in the form of at least wood chips) and creating surface disturbance within Perimeter Wetland beyond the LOD shown on the plans approved with the Permit. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> The Perimeter Wetland is associated with a standing-water shrub Swamp. The Swamp is connected to a larger wetland complex to the north and to the southeast. Vegetation within the Swamp includes at least red maple, swamp loosestrife, and sweet pepperbush. Prior to the alterations, the Perimeter Wetland was heavily vegetated with mature trees and shrubs.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown. The alterations were first documented by DEM on 2 July 2021. A follow up inspection by DEM on 16 November 2021 revealed that the Perimeter Wetland was replanted with trees and shrubs; however, it will be many years before the plants mature and the wetland recaptures the functions and values that existed prior to the alterations.</li> <li>(6) <b>Areal extent of the violation:</b> The aerial extent of the violation is approximately 8,000 square feet.</li> </ol>		
(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. The plans associated with the Permit clearly show the LOD. Respondent performed work beyond the LOD and failed to install buffer zone markers and ESC along the LOD as required by the Permit. Respondent mitigated the noncompliance by replanting the Perimeter Wetland with trees and shrubs and installing the buffer zone markers and ESC along the LOD.
- (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:** 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, was aware of the LOD, and had an obligation to protect the wetlands on the Property.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The ECN stated that the penalty could be up to \$10,000 for each violation.

<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>\$5,000</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