

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

RE: JOHN CONTI

AAD NO. C90-0089

DECISION AND ORDER

This matter was heard before the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("AAD") on November 22, 1993 pursuant to Respondents' request for hearing on the Notice of Violation and Order C90-0089. The Notice of Violation and Order ("NOV") had been issued to "John and Rose Conti et ux" (sic) on May 14, 1990 by the Department of Environmental Management Division of Groundwater and Freshwater Wetlands ("Division"). Rose Conti, according to the Suggestion of Death filed by the attorney for John Conti, died on December 7, 1992. Following the issuance of the NOV, the subject property was transferred to Richard Conti on September 17, 1992 (Records Research, Div. 31 Full). On September 23, 1993 the Division of Freshwater Wetlands ("Division") issued a Notice to Owner/Third Party Respondent (Div. 30 Full), which it subsequently served on Richard Conti.

A week prior to the hearing, John Conti suffered a heart attack and was thus unavailable as a witness. No continuance was requested. Post-hearing memoranda were to be filed with the AAD by January 14, 1994. Due to the late filing of Respondent's brief, the Division was allowed the opportunity to file a reply brief by April 8, 1994. No supplemental brief was filed.

JOHN CONTI
AAD NO. C90-0089
PAGE 2

This matter is properly before the Hearing Officer pursuant to the Freshwater Wetlands Act (R.I.G.L. Section 2-1-18 et seq), statutes governing the Administrative Adjudication Division (R.I.G.L. Section 42-17.7-1 et seq), the Administrative Procedures Act (R.I.G.L. Section 42-35-1 et seq), Administrative Penalties for Environmental Violations (R.I.G.L. Section 42-17.6-1 et seq.); the Rules and Regulations Governing the Enforcement of the Freshwater Wetlands Act, March 1981 ("Wetlands Regulations"), the Administrative Rules of Practice and Procedure for the Department of Environmental Management Administrative Adjudication Division for Environmental Matters ("AAD Rules"), and the applicable Rules and Regulations for Assessment of Administrative Penalties. The hearing was conducted in accordance with the above-noted statutes and regulations.

PREHEARING CONFERENCE

A prehearing conference was conducted on September 3, 1993 and a supplemental one was held on November 5, 1993 following service of the Notice to Owner upon Richard Conti.

The stipulations agreed to by the parties are attached hereto as Appendix A. The exhibits proffered by the Division (none were offered by Respondent at either prehearing conference or at hearing), marked as they were admitted at hearing are listed on Appendix B, attached hereto.

HEARING SUMMARY

The hearing on this matter was conducted on November 22, 1993. Post-hearing Memoranda were filed on January 14, 1994 (the Division's) and February 1, 1994 (Respondent's).

The Division called as its witnesses Richard Conti and Harold K. Ellis. Mr. Ellis, the enforcement supervisor of the Division of Freshwater Wetlands, was offered as, and stipulated to be, an expert in wetlands ecology, aerial photograph interpretation and as a natural resource specialist.

Respondent did not call any witnesses to testify.

I. BACKGROUND

According to the documentary evidence, John and Rose Conti were previously issued a Notice of Violation (Div. 4 Full) on August 3, 1979. The 1979 NOV alleged that the Contis allowed fill to be placed in the swamp and perimeter wetland on their property located in the Town of Smithfield, Rhode Island, north of George Washington Highway, Assessor's Plat 49, lot #102E. By Consent Agreement dated September 21, 1983 (Div. 14 Full), Respondents agreed to submit what constituted an amended after-the-fact application, the initial one having been denied by the Division when applicants failed to timely file requested modifications. The Consent Agreement also provided that the restoration orders contained in the NOV

JOHN CONTI
AAD NO. C90-0089
PAGE 4

would be stayed pending applicants' failure to file the amended application or until the approval or denial of the application.

The amended Application to Alter Freshwater Wetlands, allowed by the Consent Agreement, was denied by the Division on July 27, 1984 (Div. 19 Full). The denial letter contained an attached Restoration Plan which, according to Harold K. Ellis, permitted the building, as shown on the application plan, to remain, but required that the fill be removed. (Tr. 122).

This denial of the application was thereafter appealed by applicant and hearing commenced on October 22, 1984. During the proceedings, the Hearing Officer granted Summary Decision on the 1979 Notice of Violation but stayed the restoration pending her decision on the application. This ruling was adopted by the Director on September 24, 1987 (Div. 32 Full). By final agency order dated May 26, 1988 (Div. 23 Full), the application to alter freshwater wetlands was denied. No action was taken regarding the status of the stay.

Other documents indicate that during these years, particularly since 1984, additional alterations of the wetlands occurred. On May 18, 1984, a Cease and Desist Order was issued to John Conti for filling/grading over the previously placed fill. (Div. 18 Full; see also Div. 17 Full, p. 7). In an inspection report dated October 10, 1984 (Div.

21 Full), Harold K. Ellis noted what he believed to be additional violations:

"more fill has been placed in and within 50 feet of the wetland north of Mr. Conti's building." The fill consists of discarded building materials (i.e., concrete blocks, metal sheeting), gravel, auto frames, asphalt, and rocks." (also see Testimony, Tr. 103).

Further notations dated May 9, 1985 (Div. 22 Full) allege that "vans are parked up to the edge of the valuable swamp w/o a permit." In his testimony, Mr. Ellis stated that during this site visit he also noticed there had been clear cutting, placing fill on top of fill already in violation and additional fill behind the dealership. (Tr. 105).

These alleged violations were not raised at the application hearing, according to Mr. Ellis, because that hearing was only for the work proposed in the after-the-fact application: the original fill, not this additional fill. (Tr. 105-106). He testified that a Notice of Violation for these activities was not issued until 1990 because he considered that if the Hearing Officer's decision on the application resulted in requiring the original fill to be removed, then all the additional fill on top would also be removed. (Tr. 106).

It was only during the site inspection conducted on March 29, 1990, according to Mr. Ellis, that the Division became aware that an addition to the building had been constructed. Mr. Ellis testified that a review of the Division's documents

on the site indicated that the application plan submitted by John Conti in November 1983 showed a staggered back edge to the building but that a September 1984 photograph, re-examined after the 1990 site visit, revealed that an addition had squared-off the building. (Tr. 84-86; 113). It was then determined that a Notice of Violation should be issued for the building addition and for "all of the other things that were never accounted for through the application process or the 1979 Notice of Violation." (Tr. 112).

The pending Notice of Violation was then issued.

II. LIABILITY

On May 14, 1990, Notice of Violation and Order, C90-0089 (Div. 26 Full) was issued to John and Rose Conti. It alleged two instances wherein the Contis violated Sections 2-1-21 and 2-1-24 of the General Laws of Rhode Island by altering freshwater wetlands on Assessor's plat 49, Lot 102E in the Town of Smithfield without having first obtained the approval of the Director of the Department of Environmental Management.

Instance (1) alleges:

The continued grading, paving, building construction, placement of automobiles, placement of debris and construction of a drainage discharge into a swamp. The subject alterations have occurred on top of fill previously placed in violation of the Freshwater Wetlands Act and have occurred in violation of a previous order by the Director to cease and desist.

Instance (2) alleges:

The continued grading, paving, building construction and placement of automobiles into that area of land within 50 feet of the edge of the swamp as indicated in instance no. 1 above. The subject alterations have occurred on top of fill previously placed in violation of the Freshwater Wetlands Act and have occurred in violation of a previous order by the Director to cease and desist.

Respondent's counsel did not dispute the Division's testimony regarding the existence of the wetlands on the site, the occurrence of the alterations, nor the lack of a permit for the alterations cited in the 1990 NOV. Mr. Conti's case centered on arguing that the alterations had been previously adjudicated and that, in any event, John Conti was not responsible for the alterations.

On the first issue, a review of Mr. Ellis' testimony makes it clear that the application hearing did not consider the then recent alterations as violations of the Freshwater Wetlands Act, though some of these alterations were taken into account in his biological evaluation of the site. (Tr. 99). He had not testified at the 1986-1987 application hearing about the existence of the building addition because, at the time, he was unaware of it. And he considered it unnecessary to raise the issue of the new fill at the hearing since, if the hearing officer denied the after-the-fact application as to the original fill, thus requiring its removal, then the additional fill on top would also have to be removed. (Tr. 106).

To determine the second and fundamental question of liability and whether the Division has met its burden of proof on the issue, it is necessary to review the recent ownership history of the property and of the timeframe for when the alterations were performed. The title records research conducted by the Division (Div. 31 Full) reveals that John and Rose Conti purchased the property on May 2, 1979 and, less than a year later, conveyed it to their son, Richard Conti.

Richard Conti, the sole owner of Mutual Motors, Incorporated since it began operations, testified that the reason John and Rose Conti deeded Lot 102E to him in 1980 "was for the mere fact to show more of a net worth to obtain the Volkswagen franchise." (Tr. 33). Once he had obtained the franchise, the property was transferred back to his parents on July 9, 1982. During this period and until 1987, Mutual Motors leased the property and operated at the site.

In 1987, Richard Conti sold his Volkswagen/Dodge franchise to Menard Enterprises. Menard then leased the subject site from John and Rose Conti until 1990 and was, for a time, operated through the Bankruptcy Court (Tr 27, 34-36).

The ownership of the property returned to Richard Conti in September 1992. According to Richard Conti, his parents executed this later deed for estate planning purposes as his mother was terminally ill and his father was in poor health (Tr. 58).

As for the timeframe when the alterations cited in the 1990 NOV occurred, Harold K. Ellis testified both as to the nature of the alterations and to the periods in which they were conducted. He was able to identify the periods through reference to his own visits to the site.

Mr. Ellis first visited the site in 1983 but, over the years, has been to the site approximately six to ten times. (Tr. 110, 64). In February 1984, when Mr. Ellis performed his Wetland Wildlife/Recreation Evaluation (Div. 17 Full) for the pending after-the-fact application, he had observed the extent of the fill and that certain grading operations had already occurred on the site. (Tr. 73). Three months later, when delivering the Order to Cease and Desist (Div. 18 Full) to John Conti, Mr. Ellis noted the presence of grading on top of the fill, the fill which was the subject of the after-the-fact application. "In other words, there was continuing work on-site." (Tr. 75).

While Harold Ellis conceded on cross-examination that the "continued grading" cited in the NOV may also have been the subject of the May 18, 1984 Cease and Desist Order, he stated that there was later grading as well. (Tr. 117).

He testified that the alterations cited in the 1990 NOV occurred between 1984 and 1987, because "those were the only real years I was out there other than 1990." (Tr. 87). Under cross-examination, Mr. Ellis was more specific about the

JOHN CONTI
AAD NO. C90-0089
PAGE 10

timing of the alterations: the "paving" occurred at various times through the mid-1980s (Tr. 118); the "building construction" occurred between November 1983 and September 14, 1984 (Tr. 118); "placement of automobiles" continues to occur, but also occurred in the mid-1980s "right up to the edge on top of swamp, what should have been swamp" (Tr. 119); "placement of debris" occurred in the mid-1980s (Tr. 119); and the "construction of a drainage discharge into a swamp", for which Ellis admitted he was uncertain as to when it occurred, but reasoned that since it was a roof drain and likely to have been from the new building addition, would have been installed approximately 6-7 years prior to the issuance of the 1990 NOV. (Tr. 116, 121-122).

Mr. Ellis concluded that John Conti was responsible for the above alterations because he had given Mr. Conti "numerous Cease and Desist Orders over the years" (though the Division's exhibits show only the November 13, 1981 and May 18, 1984 Orders); he had observed continued violations and noted the timeframes in which they occurred; that John and Rose Conti were the owners of the property; and that on four or five occasions he had observed John Conti on the site. (Tr. 88). Mr. Ellis specifically recalled one conversation with John Conti:

Q. Mr. Webster asked you on cross regarding the person that you believe responsible for the alterations on the subject site. Did John Conti ever admit to you that he had been involved in any of the alterations

that you were there citing him for?

A. Yes.

Q. Do you remember which ones?

A. The movement of the cars, the crushed stone that was placed on-site, the cutting of the swamp in order to--he asked two men to cut the swamp down, so that they could see the car dealership from the roadway. (Tr. 123).

Mr. Conti's presence upon, and ownership of, the subject site during the relevant time period certainly supports the conclusion that Respondent knew about and permitted the unauthorized alterations.

While Respondent's counsel denies that the Division has pursued the culpable party, Respondent's son also denied any involvement in the unauthorized alterations cited in the 1990 NOV. Richard Conti testified that he did not construct the addition on the building, stating: "It would have been done by the property owners, which were my parents or whoever or Menard...I don't know who did it." (Tr. 43). Though he operated the automobile business on the site "ten hours a day...six days a week", he could not remember if there had been a building addition during the period 1982-1987 (Tr. 44). Again, when Division's counsel queried Richard Conti as to whether Respondent John Conti had ever authorized any construction to take place on the site during the period in which the son had operated Mutual Motors, he responded "I don't remember." (Tr. 55-56).

Additionally, whenever Richard Conti was questioned about documents where it was apparent that he and his father considered the property to be owned by John Conti, no matter who held the title of record, but where Richard Conti acted on his father's behalf, Richard Conti conveniently had other reasons for the appearance of ownership and agency. For example, when he was asked about his name and business being identified as parties to a Consent Agreement (Div. 14 Full) at a time when his father owned the property and to resolve an NOV issued to his father, he excused it by saying it was either a mistake by DEM or done only to assist his parents because they were wintering in Florida. (Tr. 46-47). When asked about the letter dated December 24, 1981 which was attached to the Application for Permission to Alter Freshwater Wetlands (Div. 11 Full), which letter stated that the application was for "John, Rose and Richard Conti" and was written at a time in which Richard Conti was the record owner of the site, he dismissed the correspondence as not bearing his signature and not being his letter. (Tr. 53).

Clearly the credibility of the two witnesses, Richard Conti and Harold K. Ellis, is in issue. I cannot believe that witness Conti, who from his own testimony appears to have been very dedicated to his automobile business, cannot recall when a building addition was constructed on a building his business solely occupied, nor who would have authorized the

construction. Questions of believability, trustworthiness, and reliability must be resolved in favor of the Division's witness.

I therefore conclude that, based upon the testimony and circumstances of this case in toto, the Division has met its burden of proof. Respondent John Conti violated the Freshwater Wetlands Act as set forth in the Notice of Violation.

III. RESTORATION

The Division has proved that Respondent violated Sections 2-1-21 and 2-1-24 of the General Laws of Rhode Island by altering freshwater wetlands without having first obtained a permit from the Department of Environmental Management. Section 2-1-23 of the Rhode Island General Laws provides that "[i]n the event of a violation of §2-1-21, the director of environmental management shall have the power to order complete restoration of the freshwater wetland area involved by the person or agent responsible for the violation."

Harold K. Ellis testified as to the Division's restoration requirements for the 1990 NOV-cited activities, but also included its requirements for compliance with the Restoration Plan which had been attached to the denial of the after-the-fact application. Though Respondent's counsel did not object to the line of questioning, this decision is limited to remedying the violations specifically set forth in

the 1990 NOV.

Notwithstanding that the parameters of restoration are limited to addressing these identified violations, common sense dictates that the restoration requirements be consistent with other restoration orders of the Department regarding this site.

As no testimony was presented or elicited suggesting less than full restoration, full restoration is required.

IV. ADMINISTRATIVE PENALTY

As indicated in the Notice of Violation, the Division seeks an administrative penalty of one thousand (\$1,000.00) dollars for each of the two instances wherein Respondent violated the Freshwater Wetlands Act, for a total penalty of two thousand (\$2,000.00) dollars. Mr. Ellis testified that the penalty was assessed in accordance with the Rules and Regulations for Assessment of Administrative Penalties which were in effect prior to 1992. In determining the penalty, he testified that he considered whether the Respondent

"had previously failed to comply with any law, specifically the Freshwater Wetlands Act or the rules or regulation; and in this case, on numerous occasions Mr. Conti had failed to cease and desist and continued to do work out there. And also whether the Respondent violated -- took any mitigative steps or appropriate measures to mitigate any harm out there on the particular site. In this particular case, he didn't. The proper thing to do was to stop work within wetlands and wait for final decisions from the Hearing Officer, and also we consider the public interest..." (Tr. 91).

No testimony was presented or elicited warranting a

reduction in the penalty amount.

V. CONCLUSION

The Division has proven by a preponderance of the evidence that Respondent is responsible for the violations set forth in the Notice of Violation "C90-0089 and that it is entitled to restoration and the administrative penalty.

Wherefore, after considering the testimony and documentary evidence of record, I make the following:

FINDINGS OF FACT

1. Respondent John Conti owned a parcel of property identified in the Land Evidence Records for the Town of Smithfield, Rhode Island as Assessor's Plat 49, Lot 102E ("the subject site") from May 2, 1979 until February 4, 1980 and from July 9, 1982 until September 17, 1992.
2. Respondent John Conti's son Richard Conti was the owner of record of the subject site from February 4, 1980 until July 9, 1982 and from September 17, 1992 through November 22, 1993 (the date of the hearing).
3. Freshwater wetlands are present upon the subject site; namely, a swamp, the swamp's associated fifty-foot (50') perimeter wetland and a bog.
4. On August 3, 1979, the Division of Land Resources issued a Notice of Violation to John and Rose Conti for placing fill in and within fifty (50') feet of a swamp on the subject site without a permit.
5. On October 6, 1981 the Division of Land Resources received a Freshwater Wetlands Request for Applicability Determination from John Conti regarding the subject site.
6. On October 23, 1981 the Division of Land Resources responded to John Conti's Request for Applicability Determination regarding the subject site by letter, informing John Conti that, because his proposal would result in the destruction of freshwater wetland wildlife

habitat, it would be necessary for John Conti to make a formal application to the Department to perform the work.

7. On December 28, 1981, Anthony Muscatelli filed with the Wetlands Section, Division of Land Resources an Application for Permission to Alter Freshwater Wetlands (Application No. 4964) on the subject site on behalf of owner Richard Conti, "for John Conti".
8. On December 28, 1981 a "Proposed Landfill Plan for John Rose & Richard Conti" was filed with the Wetlands Section.
9. By letter dated April 5, 1982, the "Wetlands Application of John and Rose Conti", No. 4964, regarding the subject site was denied.
10. On September 21, 1983, the Division of Land Resources entered into a Consent Agreement with John, Rose and Richard Conti and Mutual Motors, Inc. in connection with the Notice of Violation issued in 1979 by the Division concerning the subject site.
11. On November 8, 1983 Richard Conti, identifying himself as owner, filed with the Wetlands Section an Application for Permission to Alter Freshwater Wetlands, No. 4964, "for John Conti".
12. A Proposed Landfill Plan for John, Rose and Richard Conti, revised 8/20/83 was prepared for the subject site's "New Application 11-8-83". The Plan identifies an "Existing One Story Concrete Block Structure" with a staggered back of the building.
13. On February 24, 1984, Harold K. Ellis inspected and evaluated the wetlands on the subject site in connection with the Division's consideration of Application No. 4964.
14. On May 18, 1984, Harold Ellis issued an Order to Cease and Desist to John Conti for grading over an unresolved violation in and within fifty (50') feet of a freshwater wetland on the subject site.
15. By letter dated July 27, 1984, the Division of Land Resources informed Richard Conti that his application, with its proposal to alter wetlands as described in the Proposed Landfill for John, Rose and Richard Conti, revised 8/20/83, was denied. The letter also ordered

restoration in accordance with the restoration plan attached to the letter, for the portion of the proposal which had been previously accomplished without a permit.

16. By letter dated August 1, 1984, Richard Conti appealed the denial of the Application via a letter to the Division of Land Resources from attorney Robert Ciresi.
17. On September 14, 1984, Harold Ellis inspected the subject site and saw that an addition had been constructed at the rear of the building, squaring off the back of the building, which was not shown in the site plan submitted with the application to the Division in November 1983.
18. On October 10, 1984, Harold Ellis inspected the subject site and observed that more fill had been placed in and within fifty (50') feet of the wetlands on the subject site.
19. On May 9, 1985, Harold Ellis inspected the subject site and observed that vans were parked up to the edge of the swamp on the subject site without a permit.
20. On March 29, 1990, Harold Ellis visited the subject site and observed that the building had been expanded in an area of the original wetland, grading had occurred within the original swamp and its fifty (50') foot perimeter wetland, that some of the graded areas had been paved, that automobiles were parked on the paved areas, and within wetland areas, that debris had been placed into the swamp and that some drainage pipe had been placed into the swamp.
21. A Notice of Violation and Order, No. C90-0089 was issued to John and Rose Conti on May 14, 1990.
22. John and Rose Conti received Notice of Violation and Order No. C90-0089 on May 15, 1990.
23. Respondents John and Rose Conti filed a timely request for an adjudicatory hearing in connection with Notice of Violation and Order No. C90-0089.
24. A Notice to Owner regarding NOV C90-0089 was issued to Richard Conti on September 23, 1993.
25. Between November 1983 and March 29, 1990 grading, paving, building construction, placement of automobiles, placement of debris and construction of a drainage discharge into the swamp altered the freshwater wetlands

on the subject site and they remain in an altered state.

26. Between November 1983 and March 29, 1990 grading, paving building construction and placement of automobiles into that area of land within fifty (50') feet of the edge of the swamp altered the freshwater wetlands on the subject site and they remain in an altered state.
27. John Conti altered or permitted the alterations of the freshwater wetlands on the subject site.
28. Neither John Conti nor any other person received a freshwater wetlands permit to perform these alterations on the subject site.
29. Restoration of the subject site is necessary in order to restore the wetlands on this site to their natural, unaltered condition.
30. The \$2,000.00 penalty assessed against respondents John and Rose Conti in connection with the alterations performed upon the subject site is not excessive.

Based upon the foregoing facts and the documentary and testimonial evidence of record, I make the following:

CONCLUSIONS OF LAW

1. Respondents made a timely request for hearing in accordance with R.I.G.L. §42-17.1-2 (u) (1).
2. Pursuant to the provisions of R.I.G.L. §42-17.6-4, the Department of Environmental Management ("DEM") has the burden of proving each and every act or omission alleged by a preponderance of the evidence.
3. The DEM has met its burden to prove jurisdictional wetlands were altered in violation of R.I.G.L. §2-1-21(a) and the Wetlands Regulations as alleged in the Notice of Violation and Order ("NOVAO") C90-0089, issued May 14, 1990.
4. The DEM has met its burden to prove Respondent was responsible for the wetlands alterations on the subject site.
5. The Department is entitled to removal of the alterations and restoration of the freshwater wetlands consistent

with other restoration orders of the Department regarding this site.

6. The Department is entitled to the assessment of an administrative penalty in the sum of two thousand (\$2,000.00) dollars in connection with the violations which occurred on the subject site.

Wherefore, it is hereby

ORDERED

1. That Respondent must remove the alterations set forth in the NOVAO C90-0089 and restore the subject wetlands consistent with other restoration orders of the Department regarding this site and in accordance with the requirements of the Department's Division of Freshwater Wetlands no later than December 20, 1994, unless a later date is agreed to by the parties.
2. That the Respondent must contact the Division of Freshwater Wetlands prior to the commencement of restoration to ensure proper supervision and to obtain the required restoration details from the representatives of said Division.
3. That the Respondent shall, within twenty (20) days after the Final Agency Order is signed by the Director, pay a total administrative penalty of two thousand (\$2,000.00) dollars. Payment of this penalty shall be made by certified check, made payable to the "General Treasurer, State of Rhode Island" and sent to:

Rhode Island Department of Environmental Management
Attention: Robert Silvia
Office of Business Affairs
22 Hayes Street
Providence, Rhode Island 02908

JOHN CONTI
AAD NO. C90-0089
PAGE 20

Entered as an Administrative Order this 26th day of August, 1994 and herewith recommended to the Director for issuance as a Final Agency Order.

Mary F. McMahon

Mary F. McMahon
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, Third Floor
Providence, Rhode Island 02908

Entered as a Final Agency Order this 9th day of September, 1994.

Michael Annarummo
Director
Department of Environmental Management
9 Hayes Street
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within order to be forwarded, via regular mail, postage prepaid to John B. Webster, Esq., Adler Pollock & Sheehan, 2300 Hospital Trust Tower, Providence, RI 02903 and via interoffice mail to Genevieve Martin, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 9th day of September 1994.

Genevieve Martin

APPENDIX A

STIPULATION OF THE PARTIES

Pursuant to the prehearing conference conducted on September 3, 1993, the parties agreed to the following stipulations of fact (as they are set forth in the Prehearing Conference Record and Order entered on October 19, 1993):

1. The NOVAO was recorded in the Smithfield Land Evidence Records on May 15, 1990 at Book 3, File 10.
2. The Respondents filed a request for an adjudicatory hearing on May 18, 1990.

APPENDIX B
LIST OF EXHIBITS

The below-listed documents are marked as they were admitted at the hearing.

- Div. 1 Resume of Harold K. Ellis (3 pp.)
Full
- Div. 2 Resume of Dean H. Albro (3 pp.)
Full
- Div. 3 Wetlands Inspection Report by John Travassos, dated
Full July 13, 1979 (1 p.)
- Div. 4 Notice of Violation and Order No. C-817 issued to
Full John and Rose Conti, dated August 3, 1979 (2 pp.)
- Div. 5 Wetlands Inspection Report by John Travassos, dated
Full October 23, 1980. (1 p.)
- Div. 6 Freshwater Wetlands Request for Applicability
Full Determination dated received by Division of
Freshwater Wetlands October 6, 1981. (1 p.)
- Div. 7 Site Plan entitled "Survey of a Parcel of Land in
Full Town of Johnston, RI owned by John and Rose Conti
being lot 102E A.P. 45 Deed Book 59, Page 68,
showing lot lines and existing topography" dated
received October 6, 1981. (3 pp.)
- Div. 8 Correspondence to John Conti from Peter Janaros,
Full P.E. indicating that the proposed project in
Application No. 4964 represented a significant
alteration, dated October 23, 1981. (1 p.)
- Div. 9 Wetlands Inspection Report by John Travassos, dated
Full November 13, 1981. (1 p.)
- Div. 10 Order to Cease and Desist issued to Dave Coia, dated
Full November 13, 1981. (1 p.)
- Div. 11 Freshwater Wetlands Application for Permission to
Full Alter, Application No. 4964, submitted by Anthony
E. Muscatelli for A/P 49, Lot 102E, with attached

correspondence from then owner Richard Conti authorizing Anthony E. Muscatelli and Associates to submit such Application, dated received December 28, 1981. (2 pp.)

- Div. 12 Full Site Plan entitled, "Proposed Landfill Plan for John Rose and Richard Conti A/P 49, Lot 102E, Smithfield, RI" dated received December 28, 1981. (2 pp.)
- Div. 13 Full Correspondence to Anthony E. Muscatelli & Associates from Peter M. Janaros, P.E. (indicating that Application No. 4964 was denied), dated April 15, 1982. (1 p.)
- Div. 14 Full Consent Agreement for file No. 4964, dated September 21, 1984. (2 pp.)
- Div. 15 Full Freshwater Wetlands Application for Permission to Alter Application No. 4964, dated received November 8, 1983. (2 pp.)
- Div. 16 Full Site plan entitled "Proposed Landfill Plan for John, Rose & Richard Conti AP49, Lot 102E, Smithfield, RI" dated November 8, 1983. (2 pp.)
- Div. 17 Full Wetland Wildlife/Recreation Evaluation (Application No. 4964) by Harold K. Ellis, dated February 24, 1984. (9 pp.)
- Div. 18 Full Order to Cease and Desist issued to John Conti by Harold K. Ellis, dated May 18, 1984. (1 p.)
- Div. 19 Full Correspondence to Richard Conti from Peter Janaros, P.E. (denying Application No. 4964) dated July 27, 1984. (3 pp.)
- Div. 20 Full Correspondence to the Department of Environmental Management from Attorney Robert S. Cirese, (request for an adjudicatory hearing) dated received August 6, 1984. (1 p.)
- Div. 21 Full Wetlands Inspection Report by Harold K. Ellis, dated October 10, 1984. (2 pp.)
- Div. 22 Full Site Inspection dated May 9, 1985. (1 p.)
- Div. 23 Decision and Order issued by Hearing Officer

JOHN CONTI
AAD NO. C90-0089
PAGE 24

- Full (Denying Application No. 4964), dated May 26, 1988.
(12 pp.)
- Div. 24 Site Inspection Report by Harold K. Ellis, dated
Full March 29, 1990. (2 pp.)
- Div. 25 Map of subject site by Dean H. Albro, dated March
Full 29, 1990. (1 p.)
- Div. 26 Notice of Violation and Order, dated May 14, 1990;
Full and certificate of authenticity and copy of receipt
for certified mail. (7 pp.)
- Div. 27 Correspondence to Hank Ellis from Attorney John B.
Full Webster (request for adjudicatory hearing) dated
received May 18, 1990. (2 pp.)
- Div. 28 Photocopy of one (1) photograph of subject site by
for Id Hank K. Ellis dated September 14, 1984
- Div. 29 Photocopies of two (2) photographs of subject site
for Id by B.W. Monohan, dated November 7, 1980.
- Div. 30 Notice to Owner/Third Party Respondent, dated
Full September 23, 1993; Certificate of Service; and
unexecuted Affidavit of authenticity (6 pp.)
- Div. 31 Records Research Report dated June 16, 1993 prepared
Full by Judy Hardesty; and unexecuted Affidavit of
authenticity. (3 pp.)
- Div. 32 Decision and Order issued by Hearing Officer
Full dated September 24, 1987 (granting in part, and
denying in part, Division's Motion for Summary
Decision).