

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

**IN RE: Bradley Jillett
Jessica Jillett**

FILE NO.: OCI-FW-18-36

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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under RIDEM’s jurisdiction.

B. ADMINISTRATIVE HISTORY

On 1 March 2019, RIDEM issued a Notice of Intent to Enforce (“NIE”) to Respondents for the violations that are the subject of this Notice of Violation (“NOV”). The NIE advised the Respondents of the violations and the specific actions required to correct the violations. On 15 March 2019, RIDEM received a letter from Respondents in response to the NIE requesting a meeting with RIDEM to discuss the matter. On 11 April 2019, RIDEM met with Respondents and granted an extension to 15 October 2019 to correct the violations. Except for one electronic correspondence from Jessica Jillett sent to RIDEM on 14 June 2019, Respondents did not communicate further with RIDEM. On 1 October 2020, RIDEM issued a Letter of Noncompliance (“LNC”) to Bradley Jillett advising him that the violations had not been corrected. On 14 October 2020, RIDEM received a letter from Bradley Jillett in response to the LNC; however, as of the date of the NOV, Respondents have not restored the wetlands.

C. FACTS

- (1) The property is located between 160 feet and 260 feet east of Willard Avenue, at 283 Willard Avenue, approximately 250 feet south of the intersection of Willard Avenue and Whitford Street, Assessor’s Plat 56-2, Lot 163 in South Kingstown, Rhode Island (“Property”).
- (2) Respondents own the Property. Respondents acquired the Property on 23 December 2014.
- (3) On 22 February 2018, RIDEM received a complaint regarding dumping of truckloads of soil in wetlands.

- (4) On 9 April 2018 and 13 September 2018, RIDEM inspected the Property. The inspections revealed the following:
 - (a) Clearing, stumping, filling at least soil and gravel), grading, and creating soil disturbance in Forested Wetland. These activities altered approximately 9,500 square feet of freshwater wetlands.
 - (b) Filling in an Area Subject to Storm Flowage (“ASSF”) with at least sediment from unstable fill. This activity altered approximately 800 square feet of freshwater wetlands.
- (5) On 16 September 2020 and 17 June 2021, RIDEM inspected the Property. The inspections revealed that some limited restoration of the freshwater wetlands was undertaken.
- (6) The activities described in subsection C (4) 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”).
- (7) Respondents did not receive a permit from RIDEM to alter the freshwater wetlands on the Property in the areas described in subsection C (4) above.
- (8) As of the date of the NOV, Respondents have not fully restored the freshwater wetlands in the areas described in subsection C (4) above.

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) **IMMEDIATELY** cease and desist from any further alteration of the above-described freshwater wetlands.
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) If not already completed, IMMEDIATELY install (in a proper manner) appropriate biodegradable soil erosion/sediment (“SES”) controls (e.g., staked haybales and/or staked-in straw wattles/coir logs/coconut fiber logs), between all disturbed surfaces and any adjacent undisturbed wetland areas, particularly along the limits of disturbance at the northern and southern boundaries of the Property. The SES controls 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 SES controls must be installed on-site, as deemed necessary, to protect all freshwater wetlands.**
- (b) Remove all unauthorized fill material from the altered Forested Wetland, including all sod/established lawn, underlying deposited soil material, landscaping improvements, and residential amenities (i.e., swing-sets, landscaped islands, etc.). Fill material must be removed down to the original wetland grade (i.e., to the elevation of the original hydric organic surface soils). Following establishment of proper grades, all disturbed surface areas must be seeded with a proper wetland seed mixture, and covered with a mat of loose straw mulch, which is free of any contaminants that could promote the spread of invasive plant species, to provide immediate stabilization. All fill material that is removed must be deposited in an appropriate upland location, outside of all freshwater wetlands. In addition, if necessary and deemed appropriate by RIDEM, remove all non-native sediment deposits from the ASSF which have resulted from unauthorized alterations and activities described above.
- (c) Remove all components of the installed French drain system that lie within regulated freshwater wetlands (e.g., Forested Wetland and/or ASSF), which has resulted in the unauthorized discharge of surface/groundwater into said wetlands, and otherwise prevent any future discharges to the subject wetlands.

- (d) Re-grade the slope resulting from fill removal (extending from the edge of the Forested Wetland landward) to create a 3:1 or shallower slope. An adequate plantable soil (loam) material must be applied to the finished slope (as needed), and the affected areas stabilized by seeding with a wildlife conservation seed mixture and covering all disturbed surface areas with a dense mat of loose straw mulch, which is free of any contaminants that could promote the spread of invasive plant species.
- (e) Plant all surface areas within the altered Forested Wetland with trees and shrubs, as follows:
- (i) Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, 8 feet on center (apart), 3 feet tall after planting. Shrub species must include an equal distribution of at least 4 of the following selections:
- Buttonbush, *Cephalanthus occidentalis*
 - Elderberry, *Sambucus canadensis*
 - Spicebush, *Lindera benzoin*
 - Northern arrowwood, *Viburnum recognitum*
 - Winterberry, *Ilex verticillata*
 - Highbush blueberry, *Vaccinium corymbosum*
 - Swamp azalea, *Rhododendron viscosum*
 - Purple osier (basket) willow, *Salix purpurea*
 - Speckled alder, *Alnus incana* (formerly *rugosa*)
 - Red-osier dogwood, *Cornus sericea*
 - Red chokeberry, *Aronia arbutifolia*
 - Swamp rose, *Rosa palustris*
 - Sweet pepperbush, *Clethra alnifolia*
- (ii) Balled and burlapped or transplanted evergreen screening tree/shrub species must be planted in a straight line, 8 feet on-center (apart), at least 5 feet tall after planting, along the outer (landward/western) edge of the Forested Wetland, as directed by RIDEM. The tree species must include at least 2 of the following selections:
- Northern white cedar, *Thuja occidentalis*
 - Eastern hemlock (disease-resistant variety), *Tsuga canadensis*
 - White pine, *Pinus strobus*
 - Great rhododendron, *Rhododendron maximum*
- (f) If any of the required plantings fail to survive at least 2 full years from the time they have been planted, replant and maintain the same plant species until such time that survival is maintained over 2 full years.

- (g) All restored freshwater wetlands must be allowed to revert to a natural wild condition. Aside from those activities considered exempt under Part 3.6 (formerly Part 1.6) 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.
- (h) All wetland restoration requirements described above must be completed on or before **30 April 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:

\$5,000

- (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 Regulations") 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 South Kingstown, 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 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 extension 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:

Bradley Jillet
283 Willard Avenue
South Kingstown, RI 02879

Jessica Jillet
283 Willard Avenue
South Kingstown, RI 02879

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Freshwater Wetlands
 File No.: OCI-FW-18-36
 Respondents: Bradley Jillett and Jessica Jillett

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(4)(a)	Type I <i>(\$5,000 Max. Penalty) *</i>	Major	\$3,750	1 violation	\$3,750
D (1) and D (2) Wetland Alterations to ASSF - Fact C(4)(b)	Type I <i>(\$5,000 Max. Penalty) *</i>	Moderate	\$1,250	1 violation	\$1,250
SUB-TOTAL					\$5,000

*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 Respondents 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 REGULATIONS = \$5,000

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to Forested Wetland – Fact C (4)(a)
 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 Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by clearing, stumping, filling (in the form of at least soil material and gravel), grading, and creating soil disturbance in Forested Wetland. (2) Environmental conditions: Prior to the alterations, the Forested Wetland was in a more natural state with several mature trees (mostly red maple), likely a shrub layer (which is still somewhat intact at the current edge of disturbance) and an emergent layer at the bottom around the ASSF. The freshwater wetlands are/were surrounded by adjacent naturally vegetated/forested areas along with other residential properties on all sides which include maintained lawns and driveways/streets and sheds. (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 4 ½ years. RIDEM first became aware of the alterations on or about 9 April 2018 when RIDEM inspected the Property. (6) Areal extent of the violation: Approximately 9,500 square feet. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents stated that the Town of South Kingstown ("Town") approved the proposed work and that no one from the Town expressed any concern with the proposed work or that freshwater wetlands were present; however, this statement was inconsistent with the letter the Respondents received from the Town. Respondents did not take reasonable and appropriate steps to mitigate the noncompliance, despite receiving the NIE and the LNC from RIDEM requiring that they do so.
- (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.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000 \$3,750	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250

PENALTY MATRIX WORKSHEET

CITATION: Wetland Alterations to ASSF – Fact C (4)(b)

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		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</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 filling in the with at least sediment from unstable fill. The severity of the alterations to the wetland environment was determined to be of importance to the regulatory program. (2) Environmental conditions: Prior to the alterations, the ASSF was naturally present and conveyed flow from south to north. Aerial photographs revealed that it appeared there was emergent vegetation growing in at least a portion of the ASSF. Since 9 April 2018, the ASSF has been partially restored to its prior condition and emergent wetland species have started to establish at the southern end of where the ASSF was originally located. (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 4 ½ years. RIDEM first became aware of the alterations on or about 9 April 2018 when RIDEM inspected the Property. (6) Areal extent of the violation: Approximately 800 square feet. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents stated that the Town of South Kingstown (“Town”) approved the proposed work and that no one from the Town expressed any concern with the proposed work or that freshwater wetlands were present; however, this statement was inconsistent with the letter the Respondents received from the Town. Respondents did not take reasonable and appropriate steps to mitigate the noncompliance, despite receiving the NIE and the LNC from RIDEM requiring that they do so.
- (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.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500 \$1,250	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250