

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

**IN RE: Frank DiCenzo Jr. and  
DiCenzo Construction Company, Inc.**

**FILE NO.: FW C10-010**

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

B. Administrative History

On August 8, 2003 DEM issued a Notice of Violation to the Respondents ordering that the Respondents cease and desist from any further alterations of the freshwater wetlands on the property. The Respondents filed an appeal of the Notice of Violation to the DEM Administrative Adjudication Division, where the case is still pending. Inspections by DEM in 2005 and 2010 revealed further alterations of freshwater wetlands.

C. Facts

- (1) The property is located at 636 Douglas Pike, Assessor's Plat 19, Lot 3 in North Smithfield, Rhode Island (the “Property”).
- (2) Frank Dicenzo Jr. currently owns the Property.
- (3) DiCenzo Construction Company, Inc. operates a gravel and stone crushing business on the Property.
- (4) DEM inspected the Property on July 18, 2005 and January 14, 2010. The inspections revealed the following additional unauthorized alterations of freshwater wetlands:
  - (a) Filling (in the form of at least soil material), grading, clearing, creating soil disturbance, and storage of materials, vehicles, and other heavy equipment within a Forested Wetland. This activity resulted in the unauthorized alteration of approximately three thousand five hundred square feet of freshwater wetland.
  - (b) Excavating, filling (in the form of dredged soil material), clearing, grading, and creating soil disturbance within an Emergent/Shrub Wetland

Complex. This activity resulted in the unauthorized alteration of approximately one thousand square feet of freshwater wetland

- (5) The Respondents did accomplish, permit, and/or maintain unauthorized alterations of freshwater wetlands on the Property and did not receive approval from DEM to alter freshwater wetlands on the Property.

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) **RI General Laws Section 2-1-21** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (2) **DEM Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Rule 7.01** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (3) **DEM Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Rule 5.01** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.

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

**RESTORATION REQUIREMENTS**

- (a) Prior to the commencement of restoration install a continuous uninterrupted line of staked haybales or silt fence between all existing disturbed surfaces/areas to be restored and the adjacent undisturbed freshwater wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the completion of the required wetland restoration, and until such time that all of the surrounding areas are properly stabilized. At the discretion and discretion of DEM, additional on-site soil erosion and sediment controls must be installed, as deemed necessary, to protect any and all freshwater wetlands.

- (b) Remove all unauthorized fill material (including, but not limited to, soil and dredged soil material), stored materials, vehicles, and other heavy equipment from the Forested Wetland and the Emergent/Shrub Wetland Complex to the depth of the original substrate of the affected wetlands or to the elevation that existed prior to the unauthorized alteration if the original substrate is no longer present. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all freshwater wetlands. In the event that the original substrate is no longer present, an additional eight inches of soil material shall be excavated from the Forested Wetland and Emergent/Shrub Wetland Complex. A minimum eight inches of high-organic plantable soil shall be applied, as necessary, over the entire bottom of the restored and newly created wetland areas.
- (c) The restored Forested Wetland and Emergent/Shrub Wetland Complex shall be planted with a wetland seed mix and a mat of spread hay mulch shall be applied over all disturbed surface areas.
- (d) Plant a line of trees and shrubs along the outer edge of the Forested Wetland and the Emergent/Shrub Wetland Complex.

Balled and burlapped or transplanted tree species shall be planted in an interspersed fashion, seven feet on center, five feet tall after planting, throughout the areas defined above. Tree species shall include an equal distribution of at least three of the following selections:

White pine, *Pinus strobus*;  
Northern white cedar, *Thuja occidentalis*;  
Red spruce, *Picea rubens*; and/or  
Red cedar, *Juniperus virginiana*

Balled and burlapped or transplanted shrub species shall be planted in an interspersed fashion five feet on center, three feet tall after planting, throughout the area defined above. Shrub species shall include an equal distribution of at least three of the following selections:

Mountain laurel, *Kalmia latifolia*;  
Red osier dogwood, *Cornus stolonifera*;  
Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*;  
Arrowwood (southern), *Viburnum dentatum*;  
American cranberrybush, *Viburnum trilobum*;  
Winterberry, *Ilex verticillata*;  
Inkberry, *Ilex glabra*;  
Highbush blueberry, *Vaccinium corymbosum*;  
Spice bush, *Lindera benzoin*;  
Sweet pepperbush, *Clethra alnifolia*;  
Bayberry, *Myrica pennsylvanica*;  
Swamp azalea, *Rhododendron viscosum*;

Black chokeberry, *Aronia melanocarpa*;  
Speckled alder, *Alnus rugosa*;  
Smooth alder; *Alnus serrulata*; and/or  
Witchhazel, *Hamamelis virginiana*.

- (e) If any or all of the required plantings fail to survive at least one full year from the time that planting has been verified by DEM, the same plant species shall be replanted and maintained until such time that survival occurs over one full year.
  - (f) All surrounding disturbed areas shall be covered with a plantable soil/loam (if necessary), seeded with a wildlife conservation grass seed mixture (as specified above), and covered with a mat of loose hay mulch.
  - (g) All restored wetland areas, including replanted areas, shall be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within other freshwater wetlands on the Property, without first obtaining a permit from the DEM.
  - (h) Upon stabilization of all disturbed areas all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) shall be removed from the freshwater wetland. Staked haybales, spread hay mulch, and other naturally-based/bio-degradable erosion control measures may remain in place to decompose naturally. Prior to the removal of the controls and/or prior to the contractor vacating the site, all accumulated sediment shall be removed to a suitable upland area and all disturbed surfaces shall be stabilized as described above.
  - (i) The above restoration work shall be completed prior to **October 15, 2011**.
- (3) Contact Mr. Bruce Ahern at DEM (401) 222-1360 ext. 7703 prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No work shall commence until such time that you have met in the field with a representative of DEM.

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:

**Seven Thousand Five Hundred Dollars (\$ 7,500.00)**

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be

paid to the Director within twenty days of your receipt of this NOV. Payment shall be in the form of a certified check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.

- (3) Penalties assessed against respondents in this 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 the DEM 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 DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this 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, 3<sup>RD</sup> Floor  
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); **AND**
- (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 Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.

- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, 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 with regard to any violation set forth herein, then this 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 (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This 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) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Mr. Harold Ellis of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7401.

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

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David E. Chopy, Chief  
DEM Office of Compliance and Inspection

Date: \_\_\_\_\_

CERTIFICATION

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

**Frank DiCenzo, Jr.  
1 Kane Road  
Smithfield, RI 02917**

**DiCenzo Construction Company, Inc.  
c/o Frank DiCenzo, Registered Agent  
1200 Douglas Avenue  
North Providence, RI 02904**

by Hand Delivery.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C10-010

Respondents: Frank DiCenzo, Jr and DiCenzo Construction Company, 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 Forested Wetland	Type I (\$ <u>10,000</u> Max. Penalty)*	Major	\$ 5,000	1	\$5,000.00
D (1) and D(3) – Alteration of Emergent/Shrub Wetland Complex	Type I (\$ <u>10,000</u> Max. Penalty)*	Moderate	\$2,500	1	\$2,500.00
<b>SUB-TOTAL</b>					<b>\$7,500.00</b>

\*Maximum Penalties represent the maximum penalty amounts per day, per violation.

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 7,500.00**



**PENALTY MATRIX WORKSHEET**

CITATION: *Alteration of a Forested Wetland*  
 VIOLATION NO.: D (1) and (2)

TYPE		
<p><u>  X  </u> <b>TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents altered freshwater wetlands by filling (in the form of at least soil material), grading, clearing, creating soil disturbance, and storing materials, vehicles and heavy equipment. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> A portion of the Forested Wetland was previously filled by the Respondents. This alteration eliminated almost all of the remaining Forested Wetland, which was previously a natural vegetated area.</p> <p>(C) <b>Amount of the pollutant:</b> Not relevant</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Not relevant</p> <p>(E) <b>Duration of the violation:</b> Full duration unknown. At least 4 ½ years. The unauthorized alteration was first documented by DEM on July 18, 2005.</p> <p>(F) <b>Areal extent of the violation:</b> The aerial extent of the violation is approximately 3,500 square feet.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to obtain the appropriate permit from DEM. Respondents were issued a Notice of Violation by DEM on August 8, 2003 ordering the Respondents to cease and desist further alterations of the Forested Wetland and restore a separate portion of the same wetland that was altered. The Respondents filed an appeal of the Notice of Violation, which is still pending at AAD. Despite the issuance of the Notice of Violation, the Respondents continued to alter the Forested Wetland.
- (H) **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:** Not relevant
- (I) **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:** The Respondents had complete control over the occurrence of the violation and had an obligation to protect the wetlands on the property. The Respondents failed to comply with the cease and desist order in the Notice of Violation issued on August 8, 2003.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<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

**PENALTY MATRIX WORKSHEET**

CITATION: *Alteration of an Emergent/Shrub Wetland Complex*  
 VIOLATION NO.: D (1) and (3)

<b>TYPE</b>		
<p><b><u>X</u> TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents altered freshwater wetlands by excavating, filling (in the form of dredged soil material), grading, clearing, and creating soil disturbance. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> A portion of the Emergent/Shrub Wetland Complex was previously filled by the Respondents. This alteration further impacted the remaining portion of the wetland, which was previously a natural vegetated area.</p> <p>(C) <b>Amount of the pollutant:</b> Not relevant</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Not relevant</p> <p>(E) <b>Duration of the violation:</b> Full duration unknown. The unauthorized alteration was first documented by DEM on January 14, 2010.</p> <p>(F) <b>Areal extent of the violation:</b> The aerial extent of the violation is approximately 1,000 square feet.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to obtain the appropriate permit from DEM. Respondents were issued a Notice of Violation by DEM on August 8, 2003 ordering the Respondents to cease and desist further alterations of the Emergent/Shrub Wetland Complex and restore a separate portion of the same wetland that was altered. The Respondents filed an appeal of the Notice of Violation, which is still pending at AAD. Despite the issuance of the Notice of Violation, the Respondents continued to alter the Emergent/Shrub Wetland Complex.
- (H) **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:** Not relevant
- (I) **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:** The Respondents had complete control over the occurrence of the violation and had an obligation to protect the wetlands on the property. The Respondents failed to comply with the cease and desist order in the Notice of Violation issued on August 8, 2003.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<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	\$2,500 to \$5,000	\$1,000 to \$2,500
	<b>MODERATE</b>	\$2,500 to \$5,000 <b>\$2,500</b>	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500