

Department of Environmental Management  
Administrative Adjudication Division  
RE: LAURO, RICHARD M. & MARIA B.  
AAD NO. 04-001/FWE  
Notice of Violation No. C01-0321

**DECISION AND ORDER**

This matter came before the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("AAD") pursuant to Respondents' request for hearing on the the DEM Office of Compliance and Inspection ("OCI") on January 14, 2004. The hearing was held on September 27, 2004 and was deemed closed on that date.

Richard M. Lauro appeared on his own behalf. As stipulated at the prehearing conference, from June 22, 2001 through February 11, 2002, Richard M. Lauro and Maria B. Lauro were co-owners of the property. Maria B. Lauro became the sole owner of the property on February 11, 2002. Although Maria B. Lauro did not appear at the hearing, Mr. Lauro confirmed that she had been aware that the matter was scheduled for hearing. The OCI was represented by Gregory S. Schultz, Esq.

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. GEN. LAWS § 42-17.7-1 *et seq.*); Chapter 17.6 of Title 42 entitled "Administrative Penalties for Environmental Violations"; the Administrative Procedures Act (R.I. GEN. LAWS § 42-35-1 *et seq.*); the Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("AAD Rules"); and the Rules and Regulations for Assessment of Administrative Penalties ("Penalty Regulations").

**PREHEARING CONFERENCE**

A prehearing conference was conducted on June 1, 2004. Richard M. Lauro appeared at the conference; Maria B. Lauro did not appear. At the conference, the parties agreed to the following stipulations of fact:

1. The subject property is located approximately 2,300 feet west of Anna Sayles Road, opposite utility pole 3-1 and approximately 3,800 feet west of the intersection of Anna Sayles Road and Ledgemont Drive, at #8 Winsor Court, Assessor's Plat 29, Lot 343, in the Town of Lincoln, Rhode Island (the "Property").
2. Richard M. Lauro and Maria B. Lauro (the "Respondents") purchased the property on June 22, 2001.
3. On September 4, 2001, DEM inspectors issued an Order to Cease and Desist to the Respondents prohibiting any clearing, filing, grading, creating soil disturbance, building outdoor structures within the Swamp, the 50-Foot Perimeter Wetland, and the 100-Foot Riverbank Wetland located on the Property.
4. On October 25, 2001, DEM issued a Notice of Intent to Enforce ("NIE") to the Respondents prohibiting any further activity on the Property which had affected or which could affect any and all wetlands, and requiring restoration of the unauthorized alterations within freshwater wetlands on the Property to be completed by April 15, 2002.

5. On October 29, 2001, the Respondent<sup>1</sup> sent a letter to DEM stating the reasons for the work that had occurred on the Property.
6. On November 29, 2001, Richard Lauro sent a reply letter to DEM.
7. On February 11, 2002, ownership of the Property changed from both Richard M. Lauro and Maria B. Lauro to Maria B. Lauro.
8. The Respondents filed a timely request for an adjudicatory hearing.

The list of exhibits, marked as they were admitted at the hearing, is attached to this Decision as Appendix A.

The parties separately identified what they considered to be the issues to be considered at the hearing. OCI's issues were as follows:

1. Whether the Respondents or their agent(s), or servant(s) altered or permitted the alteration of the wetlands;
2. Whether these alterations altered the character of the freshwater wetlands and are therefore, a violation of the Act;
3. Whether the alterations of the freshwater wetlands were performed absent a permit from the Director of the Department of Environmental Management;
4. Whether the Department's issuance of the NOV was proper and should be affirmed.

Respondents also identified issues to be considered at the hearing:

1. Whether there is a swamp as alleged by the DEM;
2. Whether there is a retaining wall on the property as alleged by the DEM or whether it is a footing as presented by the Respondent.

### **HEARING SUMMARY**

The OCI called three (3) witnesses: **Richard M. Lauro**, the Respondent; **Michael T. Dahlquist**, an Environmental Scientist in the OCI's Wetlands Enforcement Program; and **Harold K. Ellis**, the Supervisor of OCI's Wetlands Compliance Program since 1988. During the hearing, Mr. Lauro agreed that Michael T. Dahlquist and Harold K. Ellis were qualified as expert witnesses in the areas of wetlands ecology, aerial photograph interpretation and as natural resource specialists.

Respondent **Richard M. Lauro** testified on his own behalf. He also called **Claudia Colarusso**, a Technical Staff Assistant at the OCI, as an additional witness.

#### **I. The Notice of Violation**

The NOV issued to Respondents on or about January 14, 2004 identifies property located at 8 Winsor

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<sup>1</sup> The letter was signed by Richard M. Lauro. OCI 10.

Court in the Town of Lincoln, Rhode Island. Two instances of unauthorized alterations of freshwater wetlands are alleged: one occurring in a Perimeter Wetland; the other within a Swamp and 100-Foot Riverbank Wetland. According to the NOV, Respondents are cited for violations of R.I. GEN. LAWS § 2-1-21 and Rule 7.01 of the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* ("Wetlands Regulations"), prohibiting any activity which may alter freshwater wetlands without a permit from the DEM.

Section 2-1-21 provides in pertinent part as follows:

**Approval of Director.** - (a)(1) No person ... may excavate; drain; fill; place trash, garbage, sewage, highway runoff, drainage ditch effluents, earth, rock, borrow, gravel, sand, clay, peat, or other materials or effluents upon; divert water flows into or out of; dike; dam; divert; change; add to or take from or otherwise alter the character of any fresh water wetland as defined in § 2-1-20 without first obtaining the approval of the director of the department of environmental management...

Rule 7.01, subsection A provides as follows:

A proposed project or activity which may alter freshwater wetlands requires a permit from the Director. Pursuant to Section 2-1-21(a) of the Act, except as exempt herein and except for farmers carrying out normal farming and ranching activities in accordance with Section 2-1-22(i)(1) of the Act, no person ... may excavate; drain; fill; place trash, garbage, sewage, road runoff, drainage ditch effluents, earth, rock, borrow, gravel, sand, clay, peat, or other materials or effluents upon; divert water flows into or out of; dike; dam; divert; clear; grade; construct in; add to or take from or otherwise change the character of any freshwater wetland as defined herein, in any way, without first obtaining a permit from the Director.

As a consequence of the above alleged violations, the OCI seeks restoration of the freshwater wetlands as set forth in the "Restoration Requirements" contained in the order portion of the NOV. The OCI also seeks the imposition of a Two Thousand (2,000.00) Dollar administrative penalty against the Respondents.

## **II. Alterations of Freshwater Wetlands**

According to the exhibits, stipulations and testimony, the following facts are undisputed: Respondents' property had been part of a ten (10) lot residential subdivision development by a previous owner who had received a DEM Insignificant Alteration Permit in 1996 (OCI 21 at 1); Respondents purchased the property in June 2001; Respondents shortly thereafter installed an aboveground pool, cleared and graded part of the backyard, and constructed a concrete and timber retaining wall to prevent erosion from the pool area.

Michael T. Dahlquist testified on behalf of the OCI. Accepted by Respondent as an expert in wetlands ecology, aerial photograph interpretation and as a natural resource specialist, Mr. Dahlquist stated that, as part of his employment in the OCI Wetlands Enforcement Section, he investigates complaints of alleged violations of the Wetlands Act.

Mr. Dahlquist first visited Respondents' property at 8 Winsor Court in Lincoln, Rhode Island on August 27, 2001 as follow-up to the receipt of a complaint about several properties in the area (OCI 3). Mr. Dahlquist noted in his initial report that the original development had been issued a DEM Permit but that "the recent disturbance is beyond the proposed limit of disturbance and through the perimeter wetlands and into Wooded Swamp Wetland." OCI 4.

On a site visit on September 4, 2001, Mr. Dahlquist brought a copy of the 1996 approved permit so he could compare it to the changes that had occurred on the property. His determinations as to the previously approved limits of disturbance and the square-footage measurements of the unauthorized alterations were achieved from referencing the approved plans.

Mr. Dahlquist described in his Complaint Inspection Report the specific alterations that had occurred at 8 Winsor Court:

- A. Clearing, grubbing, grading, filling (in the form of soil material), constructing a concrete retaining wall and creating soil disturbance within a Perimeter Wetland...
- B. Clearing, grubbing, grading, filling (in the form of soil material) and creating soil disturbance within a Swamp, portions of which are also within a 100-Foot Riverbank Wetland...

According to the document, the first activities resulted in the unauthorized alteration of approximately 7,500 square feet of freshwater wetland; the second incident resulted in the unauthorized alteration of approximately 16,500 square feet of freshwater wetland. OCI 5 at 1.

On October 25, 2001 a Notice of Intent to Enforce ("NOIE") was issued to Richard Lauro. OCI 9. Mr. Dahlquist testified that he had prepared the NOIE, and that his findings and recommendation for restoration were included in the NOIE.

On April 15, 2003, Mr. Dahlquist returned to the site. His Complaint Inspection Report for that date indicates that the pool, although not part of the previous permit application, was located in an approved cleared area. He states in his Report, however, that the related work (the concrete retaining wall, fill and grading) was not exempt and that this unauthorized work would need to be removed to install the required plantings. OCI 13 at 2. In a separate report from the same visit, Mr. Dahlquist noted that the "area of violation" in the rear yard was landscaped and maintained as a lawn and that none of the restoration requirements set forth in the NOIE had been completed. OCI 14 at 1.

The Notice of Violation was issued to Richard M. Lauro and Maria B. Lauro on January 14, 2004. OCI 18.

Under cross-examination by Mr. Lauro, the witness stated that he did not recall any ponding of water at the site except for where the stream was located. He explained, however, that it was not necessary for water to be on the surface for the area to be considered a swamp; water only needed to be within 36 inches of the surface.

Mr. Lauro testified both as an OCI witness and on his own behalf. He stated that the property is currently owned by Maria B. Lauro.

Respondent testified that when he and Maria B. Lauro purchased the property, he had not been told of the presence of wetlands on the property. Mr. Lauro testified that he had an aboveground pool installed behind the house and increased the size of the backyard. He stated that he removed dead trees and bushes "in the so-called swamp area." He cleared and seeded an area extending approximately 50 feet from the pool, from property line to property line. At the far side of the pool area from the house, he constructed a footing that supports a timber retaining wall to the pool area.

He stated that he had the work done because he was concerned that animals coming from the wooded area were scaring the children from using the pool and yard. He also was concerned about the presence of deer ticks and whether the children would be bitten by the animals or be stricken by some

disease, possibly Lyme Disease. He pointed out that several neighbors on the street had also altered the wetlands, so “there must be a reason.”

Respondent called DEM employee Claudia Colarusso as a witness. Ms. Colarusso identified herself as a Technical Staff Assistant who had accompanied Michael Dahlquist on a site visit on September 13, 2001. She could not remember taking the photographs attached to the Site Inspection Report of that date (OCI 8 at 2-5). She could not recall observing any standing water on the property.

Under cross-examination by the OCI, the witness reiterated that she was not a biologist and was not qualified to determine wetlands.

### **Conclusion**

Respondent Richard M. Lauro admitted that he had cleared the land in back of the house, filled to level the land, and loamed and seeded the area with grass seed. He also admitted installing the retaining wall to prevent erosion in the pool area. He questioned whether a swamp really existed on the property; he justified the alterations as being necessary to protect his children; and he excused the alleged violations because the neighbors were also altering wetlands in their yards. Notwithstanding Mr. Lauro’s rationalizations for the unauthorized alterations, the expert testimony and Mr. Lauro’s own admissions confirm the allegations set forth in the NOV.

Maria B. Lauro did not appear or present evidence at the hearing. Based upon the evidence presented at the hearing, this Respondent, as a joint property owner, also allowed the alterations to occur on the property.

I conclude that the OCI has proven by a preponderance of the evidence that both named Respondents altered the character of a Perimeter Wetland and of a Swamp and 100-Foot Riverbank Wetland, without a permit from the DEM, in violation of R.I. GEN. LAWS § 2-1-21 and Rule 7.01 of the Wetlands Regulations.

### **III. Restoration**

R.I. GEN. LAWS § 2-1-23 provides that, “[i]n the event of a violation of § 2-1-21, the director of environmental management has the power to order complete restoration of the fresh water wetland area involved by the person or agent responsible for the violation.”

Michael Dahlquist testified about his recommended restoration requirements, as did Harold K. Ellis. It was Mr. Dahlquist’s expert opinion that the restoration requirements set forth in the NOV (OCI 18 at NOV pp. 3-5) were appropriate to restore the freshwater wetlands to their pre-altered condition. Mr. Ellis, also accepted by Respondent as an expert in wetlands ecology, aerial photograph interpretation and as a natural resource specialist, opined that the restoration requirements were appropriate. He cautioned however, that they would not return the site to its pre-alteration state, “but it’s a good start.”

### **Conclusion**

Two expert opinions confirm that the restoration steps set forth in the NOV are appropriate for the wetlands to be returned to some semblance of their former character.

Mr. Lauro, on the other hand, identified his concerns about the health and safety of his children and their possible exposure to animals from the wooded area. If the alterations are to be removed, then those purported dangers would return.

I find it difficult to give Mr. Lauro's concerns much weight because the Respondents knew when they purchased the house that a wooded area abutted the property and that it would be a likely event that animals on occasion would exit the woods. I find it significant that the alterations occurred very soon after the property was purchased. The more likely conclusion to be drawn from these facts is that the Lauros chose to install the pool and expand the backyard for the simple reason that it would increase the usefulness of the property, and its value.

I conclude that the restoration set forth in the NOV is therefore warranted.

#### **IV. Assessment of an Administrative Penalty**

As indicated in the NOV, the OCI seeks the assessment of an administrative penalty in the amount of Two Thousand (2,000.00) Dollars, jointly and severally, against each named Respondent. The NOV states that the penalty was assessed against Respondents pursuant to R.I. GEN. LAWS § 42-17.6-2 and was calculated pursuant to the Penalty Regulations.

§ 12(c) of the Penalty Regulations provides the following:

In an enforcement hearing the Director must prove the alleged violation by a preponderance of the evidence. Once a violation is established, the violator bears the burden of proving by a preponderance of the evidence that the Director failed to assess the penalty and/or the economic benefit portion of the penalty in accordance with these regulations.

The Agency's interpretation of this provision requires the OCI to prove the alleged violation by a preponderance of the evidence and "includes establishing, in evidence, the penalty amount and its calculation." The violator then bears the burden of proving that the penalty and/or economic benefit portion of the penalty was not assessed in accordance with the Penalty Regulations. In Re: Richard Fickett, AAD No. 93-014/GWE, Final Decision and Order issued by the Director on December 9, 1995.

Section 10 of the Penalty Regulations provides for the calculation of the penalty through the determination of whether a violation is a Type I, Type II or Type III violation and whether the Deviation from Standard is Minor, Moderate or Major. Once the Type and Deviation from Standard are known, a penalty range for the violation can be determined by reference to the appropriate penalty matrix.

The penalty amount and its calculation were established in evidence through the introduction of the NOV's Administrative Penalty Summary, the Penalty Matrix Worksheets (OCI 18 at NOV pp. 8-10) and the testimony of Harold K. Ellis, the Supervisor of the OCI's Wetlands Compliance Program. Two separate alterations were identified: to the Perimeter Wetland; and to the Swamp and Riverbank Wetland. Each was calculated to be a Type I violation with a Major Deviation from the Standard. The factors considered are set forth in the Worksheets. The documentary and testimonial evidence established that the assessed penalty for the two violations was Two Thousand (2,000.00) Dollars.

#### **Conclusion**

No countering evidence was presented by Respondent. I conclude that Respondents have failed to prove by a preponderance of the evidence that the assessment of an administrative penalty in the amount of Two Thousand (2,000.00) Dollars was not in accordance with the Penalty Regulations.

Wherefore, after considering the stipulations of the parties and the testimonial and documentary evidence of record, I make the following:

## **FINDINGS OF FACT**

1. The subject property is located approximately 2,300 feet west of Anna Sayles Road, opposite utility pole 3-1 and approximately 3,800 feet west of the intersection of Anna Sayles Road and Ledgemont Drive, at #8 Winsor Court, Assessor's Plat 29, Lot 343, in the Town of Lincoln, Rhode Island (the "Property").
2. Freshwater wetlands, specifically a Perimeter Wetland, Swamp and 100-Foot Riverbank Wetland are present on the property.
3. An Insignificant Alteration Permit was issued by DEM to SRT, Inc. on November 15, 1996 for a ten (10) lot residential subdivision that included this property.
4. The Insignificant Alteration Permit was recorded in the Land Evidence Records of the Town of Lincoln on November 22, 1996.
5. Richard M. Lauro and Maria B. Lauro (the "Respondents") purchased the property on June 22, 2001.
6. DEM personnel conducted inspections of the property on August 27, 2001, September 4, 2001 and April 15, 2003.
7. Respondents or their agent(s) altered or permitted the alterations of freshwater wetlands in the following manner:
  - (a) Clearing, grubbing, grading, filling (in the form of soil material), constructing a concrete retaining wall and creating soil disturbance within a Perimeter Wetland, resulting in the alteration of approximately 7,500 square feet of freshwater wetland.
  - (b) Clearing, grubbing, grading, filling (in the form of soil material) and creating soil disturbance within a Swamp, portions of which are also within a 100-Foot Riverbank Wetland, resulting in the alteration of approximately 16,500 square feet of freshwater wetland.
8. The above activities altered the character of the freshwater wetlands on the property.
9. Respondents did not obtain the approval of the Director of the Department of Environmental Management prior to altering freshwater wetlands on the property.
10. An Order to Cease and Desist was issued on September 4, 2001.
11. On October 25, 2001 the DEM issued a Notice of Intent to Enforce to Richard Lauro.
12. Ownership of the property changed from Richard M. Lauro and Maria B. Lauro to Maria B. Lauro on February 11, 2002.
13. On January 14, 2004 a Notice of Violation was issued to Richard M. Lauro and Maria B. Lauro.
14. Restoration of the freshwater wetlands on the property is necessary in order to restore the wetlands to their natural, unaltered condition.

15. The OCI established in evidence that each of the two (2) instances of unauthorized alteration of a freshwater wetland was determined to be a Type I Major Deviation from the Standard.
16. The OCI established in evidence that the amount of the administrative penalty for each of the two (2) instances of unauthorized alteration of a freshwater wetland was))1,000.00, for a total administrative penalty of)) 2,000.00.
17. An administrative penalty in the amount of))2,000.00 for two (2) instances of unauthorized alteration of a freshwater wetland is not excessive.

### **CONCLUSIONS OF LAW**

After due consideration of the documentary and testimonial evidence of record and based upon the above findings of fact, I conclude the following as a matter of law:

1. The OCI has proved by a preponderance of the evidence that a Perimeter Wetland on the property was altered in violation of R.I. GEN. LAWS § 2-1-21 and Rule 7.01 of the Wetlands Regulations as alleged in the Notice of Violation.
2. The OCI has proved by a preponderance of the evidence that a Swamp and 100-Foot Riverbank Wetland on the property were altered in violation of R.I. GEN. LAWS § 2-1-21 and Rule 7.01 of the Wetlands Regulations as alleged in the Notice of Violation.
3. The OCI has proved by a preponderance of the evidence that Richard M. Lauro and Maria B. Lauro were responsible for the unauthorized alterations of freshwater wetlands on the property.
4. Pursuant to R.I. GEN. LAWS § 2-1-23, the Department is entitled to the removal of the unauthorized alterations and to the restoration of the freshwater wetlands on the property.
5. The OCI established in evidence the penalty amount and its calculation for the two (2) instances of violation as set forth in the Notice of Violation.
6. Respondents have failed to prove by a preponderance of the evidence that OCI's determination that each of the violations was a Type I Major Deviation from the Standard was not in accordance with the Penalty Regulations.
7. Respondents have failed to prove by a preponderance of the evidence that the assessment of an administrative penalty in the amount of Two Thousand (0)2,000.00) Dollars is not in accordance with the Penalty Regulations.
8. The assessment of an administrative penalty in the amount of Two Thousand (0) 2,000.00) Dollars is in accordance with the Penalty Regulations.

Wherefore, based upon the above Findings of Fact and Conclusions of Law, it is hereby

### **ORDERED**

1. Respondents shall immediately cease and desist from any further alteration of the freshwater wetlands on the property.

2. Respondents shall 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 the edge of the undisturbed Swamp and the restoration work required in the Perimeter Wetland.
- (b) Remove all unauthorized structures and fill material (including the concrete retaining wall), from the Perimeter Wetland, Swamp, and the 100-Foot Riverbank Wetland. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
- (c) Re-grade any slope resulting from fill removal to a 3:1 slope or shallower. Finished slopes must be stabilized by seeding with a wildlife conservation grass seed mixture and by mulching all disturbed areas with a mat of loose hay.
- (d) Plant trees and shrubs in all unauthorized cleared and altered areas within the Swamp.

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, fifteen feet (15') on center, four feet (4') tall after planting, throughout the area defined above. Tree species must include an equal distribution of at least three (3) of the following selections:

- Red maple, *Acer rubrum*;
- Black gum (Tupelo), *Nyssa sylvatica*;
- Green Ash, *Fraxinus pennsylvanica*.

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, ten feet (10') on center, three feet (3') tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least four (4) of the following selections:

- Silky dogwood, *Cornus amomum*;
- Red osier dogwood, *Cornus stolonifera*;
- Arrowwood, *Viburnum dentatum*;
- Elderberry, *Sambucus canadensis*;
- Winterberry, *Ilex verticillata*;
- Highbush blueberry, *Vaccinium corymbosum*;
- Spice bush, *Lindera benzoin*;
- Swamp azalea, *Rhododendron viscosum*;
- Speckled alder, *Alnus rugosa*;
- Witchhazel, *Hamamelis virginiana*.

- (e) Plant trees and shrubs in all unauthorized cleared and altered areas within the Perimeter Wetland.

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, ten feet (10') on center, four feet (4') tall after planting, throughout the area defined above. Tree species must include an equal distribution of at least three (3) of the following selections:

- Pin Oak, *Quercus palustris*;
- Northern Red Oak, *Quercus rubra*;
- White Pine, *Pinus strobus*;
- Red maple, *Acer rubrum*;
- Black gum (Tupelo), *Nyssa sylvatica*;
- American holly, *Ilex opaca*;
- Eastern cottonwood, *Populus deltoides*;
- Gray Birch, *Betula populifolia*.

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, seven feet (7') on center, three feet (3') tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least four (4) of the following selections:

- Silky dogwood, *Cornus amomum*;
- Highbush Blueberry, *Vaccinium corymbosum*;
- Red osier dogwood, *Cornus stolonifera*;
- Arrowwood, *Viburnum dentatum*;
- Wild raisin, *Viburnum cassinoides*;
- Elderberry, *Sambucus canadensis*;
- Winterberry, *Ilex verticillata*;
- Inkberry, *Ilex glabra*;
- Spice bush, *Lindera benzoin*;
- Speckled alder, *Alnus rugosa*;
- Witchhazel, *Hamamelis virginiana*.

- (f) In addition to the above required restoration plantings, tree plantings consisting of Northern White Cedar (*Thuja occidentalis*), shall be installed along the edge of the 50-foot Perimeter Wetland on the Property. The trees shall be planted ten feet (10') on center, three feet (3') tall after planting.
- (g) If any or all of the required plantings fail to survive at least two (2) full growing seasons from the time they have been planted, the Respondents shall be responsible for replanting and maintaining the same plant species until such time that survival is maintained over two (2) full growing seasons.
- (h) All disturbed surfaces must be covered with plantable soil/loam (if necessary), seeded with a wildlife conservation grass seed mixture, and stabilized with a mat of loose hay mulch. If necessary, very steep or extremely unstable surfaces must be covered with an erosion control matting of some type (e.g., excelsior matting or jute mesh).
- (i) Upon stabilization of all restored areas, erosion and sedimentation controls must be removed from the freshwater wetland. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area, outside of any and all freshwater wetlands.

(j) All restored freshwater wetland areas, including replanted areas, must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations will be allowed in the restored wetland areas without first obtaining a valid permit from this Department.

(k) All restoration work required above must be completed prior to **May 1, 2005**.

3. Respondents shall contact Michael Dahlquist of the Office of Compliance and Inspection (401) 222-4700 Ext. 7507 prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No work shall commence until such time that Respondents have met in the field with a representative of the Office of Compliance and Inspection.
4. An administrative penalty in the amount of Two Thousand (2,000.00) Dollars is hereby ASSESSED, jointly and severally, against the Respondents.
5. Respondents shall make payment of the administrative penalty within thirty (30) days from the date of entry of the Final Agency Order in this matter. Payment shall be in the form of a certified check or money order made payable to the "General Treasury - Environmental Response Fund Account," and shall be forwarded to:

R.I. Department of Environmental Management  
Office of Management Services  
235 Promenade Street, Room 340  
Providence, Rhode Island 02908

Attention: Terrence Maguire

Entered as an Administrative Order this \_\_\_\_\_ day of November, 2004 and herewith recommended to the Acting Director for issuance as a Final Agency Order.

Mary F. McMahon  
Hearing Officer

Entered as a Final Agency Order this \_\_\_\_ day of \_\_\_\_\_ 2004.

Frederick Vincent  
Acting Director

## **APPENDIX A**

### **LIST OF EXHIBITS**

#### **OCI'S EXHIBITS**

OCI 1  
Full

Approved Site Plan from Insignificant Alteration Permit Application No.  
96-0323

OCI 2  
Full Copy of Approval Letter for Application No. 96-0323 for an Insignificant Alteration Permit for subject property, dated November 15, 1996, four (4) pages

OCI 3  
Full Copy of Office of Compliance and Inspection Complaint Form, dated August 21, 2001, one (1) page.

OCI 4  
Full Copy of Triage Complaint Report of subject property, dated August 27, 2001, one (1) page.

OCI 5  
Full Copy of Complaint Inspection Report of subject property, dated September 4, 2001, two (2) pages.

OCI 6  
Full Copy of Biological Inspection Report of subject property, dated September 4, 2001, three (3) pages.

OCI 7  
Full Copy of "Order to Cease and Desist," issued September 4, 2001, one (1) page.

OCI 8  
Full Original Site Inspection Report of subject property, dated September 13 2001, five (5) pages.

OCI 9  
Full Copy of Notice of Intent to Enforce, issued October 25, 2001, five (5) pages.

OCI 10  
Full Copy of Letter from Richard M. Lauro to Rhode Island Department of Environmental Management, dated October 29, 2001, one (1) page.

OCI 11  
Full Copy of Letter from David Chopy to Richard Lauro, dated November 8, 2001, three (3) pages.

OCI 12  
Full Copy of Letter from Richard M. Lauro to Stephen Tyrrell, dated November 29, 2001, one (1) page.

OCI 13  
Full Copy of Complaint Inspection Report of subject property, dated April 15, 2003, two (2) pages.

OCI 14  
Full Copy of Site Inspection Report of subject property, dated April 15, 2003, three (3) pages.

- OCI 15  
Full Colored "Sketch Photo Copied from Approved Permit 96-0323," dated April 15, 2003, two (2) pages.
- OCI 16  
for Id Copy of Records Research for subject property, dated December 18, 2003, two (2) pages.
- OCI 17  
for Id Aerial Photographs of subject property provided by ArcIMS HTML Viewer Map, dated May 21, 2003, one (1) page.
- OCI 18  
Full Copy of Notice of Violation, issued January 14, 2004, twelve (12) pages.
- OCI 19  
for Id Resume of Harold K. Ellis, three (3) pages.
- OCI 20  
Full Resume of Michael Dahlquist.
- OCI 21  
Full Copy of Approval Letter for Application No. 96-0323 for an Insignificant Alteration Permit for subject property, dated November 15, 1996 with recording information from Town of Lincoln Land Evidence Records.

## **RESPONDENT'S EXHIBITS**

- Resp 1  
for Id Video cassette of two tapings from May 2004 that show the backyard of Respondent's property. (identified at the prehearing conference but not provided at the hearing)
- Resp 2  
for Id Copies of photographs of the property.