

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

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL PROGRAMMING FOUNDATION, INC.
AAD No. 18-004/FWE
NOTICE OF VIOLATION OCI-FW-17-129**

DECISION AND ORDER

This matter came on for Administrative Hearing on April 24, 2019 before Chief Hearing Officer David Kerins. The Respondent, North American Educational Programming Foundation, Inc. ("NACEPF" and "Respondent") was represented by Peter J. Petrarca, Esquire and the Rhode Island Department of Environmental Management ("DEM") was represented by Christina A. Hoefsmits, Esquire. On May 7, 2019 NACEPF's Motion to View the Property was granted and a view of the property by the Hearing Officer took place on May 20, 2019. On July 16, 2019 NACEPF filed a Motion to Dismiss which was denied on August 20, 2019. Post Hearing Memoranda were filed by DEM and NACEPF on September 30, 2019 and October 1, 2019 respectively.

This matter came before the Administrative Adjudication Division for Environmental Matters ("AAD") on an appeal filed by NACEPF on July 23, 2018. The Appeal was taken from a Notice of Violation ("NOV") file by DEM against NACEPF on July 11, 2018 alleging violations of the Freshwater Wetlands Act. This matter is properly before the Hearing Office pursuant to the Freshwater Wetlands Act (R.I.G.L. § 2-1-18 et seq.), the statutes governing AAD (R.I.G.L. § 42-17.7-1 et seq.), the Administrative Procedures Act (R.I.G.L. § 42-35-1 et seq.), the duly promulgated Rules and Regulations Governing the Enforcement of the Freshwater Wetlands Act ("Wetlands Regulations"), the Administrative Rules and Practice and Procedure for the AAD, and the Rules and Regulations for Assessment of Administrative Penalties ("Penalty Regulations"). The hearing was conducted in accordance with the above noted statutes and regulations.

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL PROGRAMMING FOUNDATION, INC. AAD No. 18-004/FWE
NOTICE OF VIOLATION OCI-FW-17-129**

Page 2

ALLEGED VIOLATIONS

DEM alleged that NAECPF 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 the DEM.
- (2) **DEM's Freshwater Wetland Regulations, Rule 5.01** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.

STIPULATIONS

The parties entered into and filed Stipulations on April 2, 2019. The Stipulation included stipulation of facts and stipulated exhibits and was entered into evidence as Joint Exhibit 1 Full.

HEARING SUMMARY

DEM presented four (4) witnesses at the Administrative Hearing: Shawna B. Smith; Howard Cook; David E. Chopy and Kenneth Ayers. NAECPF presented one witness, John Primeau.

Shawna B. Smith testified that she is a Senior Environmental Scientist employed by DEM in the Office of Compliance and Inspection (“OC&I”). Her duties include responding to complaints and investigating violations of the Freshwater Wetlands Act (“Act”). During her fourteen (14) years with DEM she has conducted over fifteen hundred (1,500) inspections. Ms. Smith was qualified, without objection, as an expert in environmental inspections, interpretation of aerial photographs and wetlands identification.

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL AAD No. 18-004/FWE
PROGRAMMING FOUNDATION, INC.
NOTICE OF VIOLATION OCI-FW-17-129**

Page 3

Ms. Smith testified that she is familiar with the NOV in this matter. On September 26, 2017 she conducted an inspection of the property and prepared a Complaint Inspection Report (DEM Exhibit 4(a)). In the report Ms. Smith listed five (5) areas of alteration as follows:

1. Clearing, grubbing, stumping, filling (in the form of at least soil, gravel, rocks, boulders, concrete bridge slabs, and sedimentation), grading, and soil disturbances through Swamp, four (4) stream courses, and the associated 50' Perimeter Wetlands and 100' Riverbank Wetlands (portions overlapping) for the construction of a road. These activities have resulted in the unauthorized alteration of approximately **0.88 acres** (38,300 square feet) of Freshwater Wetland.
2. Clearing, grubbing, stumping, filling (in the form of soil, gravel, rocks, boulders, logs, stumps and sedimentation), grading, excavating and soil disturbances within **Swamp** for the construction of a second road. These activities have resulted in the unauthorized alteration of approximately 10,000 square feet of Freshwater Wetland.
3. Ditching, diverting, filling (in the form of soil, gravel, rocks, boulders and sedimentation) and soil disturbances with a River (Rush Brook). These activities have resulted in the unauthorized alteration of approximately 150 linear feet (1,500 square feet) of Freshwater Wetland.
4. Clearing, grubbing, stumping, filling (in the form of at least soil, rocks, mulch, logs, stumps and slash), grading and soil disturbances within Swamp (including overlapping 50' Perimeter Wetlands and 100' Riverbank Wetlands). These activities have resulted in the authorized alteration of approximately 5 acres of Freshwater Wetland.
5. Clearing, grubbing, stumping, filling (in the form of soil, mulch, rocks, boulders, logs, stumps, and slash) grading and soil disturbances through 50' Perimeter Wetlands and 100' Riverbank Wetlands (portions overlapping). These activities have resulted in the unauthorized alteration of approximately 8.5 acres of Freshwater Wetland.

The report also included twenty (20) photographs and two (2) site sketches. Ms. Smith went on to testify in detail regarding the facts contained in her report. She testified that the

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL PROGRAMMING FOUNDATION, INC. AAD No. 18-004/FWE
NOTICE OF VIOLATION OCI-FW-17-129**

Page 4

alterations which she observed were not covered by a permit.

Ms. Smith testified that NACEPF had been granted a permit for insignificant alteration for a portion of the adjoining lot, Lot 31. She identified DEM Exhibit 1(a) as the Insignificant Alteration Permit issued by DEM on November 6, 2014, as well as the accompanying sheet plan, five (5) sheets, which is DEM Exhibit 1(b). She said that the violations she observed were outside the limit of the plan. She went on to say that she had checked the DEM database and could find no permit for the areas of disturbances covered by the NOV.

Ms. Smith testified in detail about each of the five (5) separate violations contained in the her report. She described that in her sketch she identified each alteration with a different line of color. She also testified at length about the photographs which she took during her inspection. She said that the photographs were a fair and accurate depiction of the conditions she observed. The view take by the Hearing Officer on May 20, 2019 was useful in the understanding of the photographs as well as the overall extent of the activities of the property.

Attorney Petrarca conducted a cross examination of Ms. Smith. She said that she did not inspect the area covered by the "Insignificant Alteration Permit". She only inspected the area to the north outside the permitted area. She was questioned about the issue of "colonial" paths or roads. She was asked questions regarding the status of "farmer" to which she replied that based on her understanding of the "farmer" definition, NACEPF was not a "farmer" at the time of her inspection. During redirect and re-cross examination Ms. Smith testified that the roads she observed were not an extension of existing colonial trails but were improved to the extent that they were entirely new roads.

Howard Cook was DEM's next witness. He testified that he is the Principal Environmental Scientist with the Division of Agriculture. Mr. Cook described his duties as

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL PROGRAMMING FOUNDATION, INC. AAD No. 18-004/FWE
NOTICE OF VIOLATION OCI-FW-17-129**

Page 5

Principal Environmental Scientist. He has been working in matters that involve the application of the Freshwater Wetlands Act as they apply to farmers for twenty (20) years. He has conducted more than three thousand (3,000) inspections. He said that he handles a half dozen applications of farmer wetlands annually.

Mr. Cook testified that he was familiar with the definition of "farmer" under the Freshwater Wetlands Act. He said a farmer is an individual or corporation which derives income from the sale of farm products in the amount of at least ten thousand dollars (\$10,000.00) for a four (4) year period, has filed a 1040F or equivalent IRS instrument and have a Farm Tax ID number. In the case of NACEPF they donate their farm products rather than sell. He said that NACEPF submitted documents to establish farmer designation in 2017. Mr. Cook identified Respondent Exhibit B as Farming Production Beneficiary Receipts for 2014. He went on to identify Respondent Exhibits C, D and E as Farm Production Beneficiary Receipts for the years 2015, 2016 and 2017 respectively. These documents were accepted to establish the NACEPF as a farmer in 2018. He testified that the designation of farmer is not retroactive.

Mr. Cook testified that R.I. Gen. Laws § 2-1-21 lays out the specific normal farming/ranching activities permitted under the Act as clearing, cultivating, maintenance of existing farm ponds and farm roads. If a person does not meet the farmer designation they are not entitled to the exemption under normal farming activities. He testified that a person who has obtained a farm tract number from the United States Department of Agriculture ("USDA") does not meet the definition of farmer under the Act.

Mr. Cook testified that if a person does not meet the definition of farmer under the Act they can engage in farming activities but they would have to submit a Freshwater Wetlands application to make alterations to wetlands. If a person meets the definition of farmer under the

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL AAD No. 18-004/FWE
PROGRAMMING FOUNDATION, INC.
NOTICE OF VIOLATION OCI-FW-17-129**

Page 6

Act, they are allowed certain exemptions but it is not unlimited. They would still need to maintain the natural character of the wetlands, they would need to maintain the flow characteristics, the habitat, etc.

Mr. Cook testified that construction of a road does not follow under normal farming practices. Someone who met the definition of farmer would apply to the Division of Agriculture for building a road in a wetlands. If it was determined to be an “insignificant alteration” the Division of Agriculture would issue a permit. If it was a “significant alteration” the farmer would have to apply to the Office of Water Resources for a permit like any non-farmer.

Mr. Cook testified that the Respondent did not submit an application to construct a road through the subject property. He said that at the time Ms. Smith conducted her inspection, September 26, 2017, the Respondent did not meet the definition of farmer. He went on to testify that the five (5) instances listed and described in Ms. Smith’s report (DEM Exhibits 4a and 4b) did not constitute normal farming activities. He testified that under R.I. Gen. Laws § 2-1-21 no filling of wetlands is exempt.

Respondent’s attorney conducted a cross-examination and initially questioned Mr. Cook regarding the definition of “normal farming activities”. The policy of DEM is to follow “best farm management practices” established by the USDA. DEM does not have any regulations on “best farm management practices”. When asked to indicate where the 50 feet buffer is required he testified R.I. Gen. Laws § 2-1-21. Mr. Cook testified that DEM has promulgated new regulations subsequent to the amendment of R.I. Gen. Laws § 2-1-21 in 2015.

Mr. Cook testified that someone can qualify as a farmer by farming for four (4) years. He cannot farm in a wetlands without a permit from the Office of Water Resources until he meets their requirements. He could farm in a regular plot of land to establish his status before moving

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL PROGRAMMING FOUNDATION, INC. AAD No. 18-004/FWE
NOTICE OF VIOLATION OCI-FW-17-129**

Page 7

into a wetlands providing he meets the proof of income requirement.

DEM conducted a brief redirect examination repeating the requirement of obtaining status of farmer. He said the only authority that the Division of Agriculture has is to issue a permit to a farmer for an "insignificant alteration" for the construction of a farm road to a farmer. It does not have authority to approve filling within a wetlands.

David E. Chopy was called as DEM's next witness. Mr. Chopy testified that he had been employed by DEM for thirty-four (34) years and is currently the Administrator of the Office of Compliance and Inspection. Mr. Chopy testified about the calculations of the administrative penalty contained in the NOV (DEM Exhibit 5). He said that during the course of his employment he has been involved in the calculation of hundreds of administrative penalties. He identified DEM Exhibit 7 as the Rules and Regulations for the Assessment of Administrative Penalties ("Penalty Rules"). Mr. Chopy was qualified as an expert in the application of the Rules and Regulations for Administrative Penalties without objection.

Mr. Chopy testified that he is familiar with the administrative penalties contained in the NOV (DEM Exhibit 5). He said that he determined the administrative penalty against the Respondent and signed the NOV (DEM Exhibit 5). The administrative penalty assessed was fifty-thousand dollars (\$50,000.00). Mr. Chopy explained at length how the administrative penalty was calculated in this matter.

Mr. Chopy was cross-examined by Respondent's counsel. He was asked about the restoration requirements in the NOV (DEM Exhibit 5). In answer to a question he testified that the Penalty Rules had not been amended since 1996.

Kenneth Ayars was called as DEM's next witness. Mr. Ayars testified that he is the Chief of the Division of Agriculture and has held that position for twenty-one (21) years of his

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL PROGRAMMING FOUNDATION, INC. AAD No. 18-004/FWE
NOTICE OF VIOLATION OCI-FW-17-129**

Page 8

thirty-two (32) years of employment with DEM. His duties include overseeing agricultural wetlands and the agricultural farmer qualification process. He is familiar with the application of the Freshwater Wetlands Act to farmers. Mr. Ayars was qualified as an expert in the area of the agricultural definition of a farmer under the Act and the farmer qualification process.

Mr. Ayars testified that he is familiar with the NAECPF and Mr. Primeau who he met around 2013. Mr. Ayars stated that the definition of farmer according to the Act. During 2018 the Respondent was qualified as a farmer. Mr. Ayars said that the law distinguishes between activities which are exempt and which require a permit. He said that activities which are exempt are generally maintenance type activities such as maintenance of an existing farm pond, maintenance of an existing farm road or maintenance of an existing farm drainage structure. Those activities fall under the definition of normal farming and ranching activities. The Respondent did not achieve the status of farmer until after the NOV was issued.

On cross-examination Mr. Ayars testified that the road on the subject property was above and beyond maintenance. The activities that were observed involved stream crossing and significant expansion in terms of depth and width. He said that the word maintenance is not defined by the Act. The Division looks at the status of farmer going forward. The farmer definition means looking forward and the definition applies to activities going forward. Upon the conclusion of Mr. Ayars DEM rested.

John Primeau was called as a witness for the Respondent. He testified that he is the president of NACEPF which is a non-profit created in 1989. The purpose of the NACEPF is to grow produce to give to churches, soup kitchens, dispensaries and pantries. In 2013 the corporation bought some land with the intent of farming. They are currently farming that land. In 2017 they filed for farming designation with DEM.

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL AAD No. 18-004/FWE
PROGRAMMING FOUNDATION, INC.
NOTICE OF VIOLATION OCI-FW-17-129**

Page 9

Mr. Primeau testified that he pulled a permit with DEM for an incidental permit on property adjacent to the subject property. He said that he did not stop the flow or change the path of any brook or river. He said that he replaced a bridge of rotting logs with a concrete slab. He said that he cleared paths which were pre-existing.

The Respondent asked to create an exhibit to assist the witness in identifying pre-existing paths. Respondent created Respondent's Exhibit M which was marked and entered into evidence for identification. Mr. Primeau testified at length about the pre-existing roads and paths on the subject property but it is difficult to understand where these roads or paths were from the transcript because he used the terms "here" or "there" without marking the exhibit at that time. Mr. Primeau made yellow lines on Respondent's Exhibit M to show where roads or paths were. Mr. Primeau testified that he did not add to or alter the roads or paths in any way.

DEM conducted a cross-examination of Mr. Primeau. He was directed to DEM Exhibit 1B which is a plan submitted with the application for Insignificant Alteration Permit for Lot 31. The plan submitted showed the existing condition of the property. He said that he used the engineering work done by the previous owner. He was asked by the DEM attorney if there is road seen in photographs 17 and 18 of DEM Exhibit 4B. He said "that's correct - well, a pathway, road now, I suppose". (Tr. p 152). When asked if he did some improvements to that road he said that he said "well, the first thing we do is we put stone, if there's water there, and we compound it". (Tr. p 152)

Upon the completion of Mr. Primeau's testimony the Respondent rested and renewed its Motion for a View. The Hearing Officer stated that due to the confusion created during the testimony that he needed to take a view to better understand the testimonial and documentary evidence. The Administrative Hearing was adjourned.

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL PROGRAMMING FOUNDATION, INC. AAD No. 18-004/FWE
NOTICE OF VIOLATION OCI-FW-17-129**

Page 10

BURDEN OF PROOF

In an appeal of a Notice of Violation the burden of proof is on the Department is to prove, by a preponderance of the evidence, that the Notice of Violation was proper. “The burden of showing something by a preponderance of the evidence...simply requires the trier to believe that the existence of a fact is more probable than its nonexistence before he may find in favor of the party who has the burden to persuade the judge of the facts existence.” Metropolitan Stevedore Co v Rambo, 521 U.S. 121.

ANALYSIS

DEM has the burden of proof to show that the Respondent violated the Freshwater Wetlands Act (“Act”) as alleged in the Notice of Violation (“NOV”) issued on or about July 11, 2018. The NOV was issued as result of inspections of the subject premises on July 26, 2017 and September 26, 2017. The Respondent takes the position that any alterations it made were allowed as exemptions to which it was entitled under the farmer designation available under R.I. Gen. Laws § 2-1-22 (1). Respondent argues that the alterations of the subject property were permissible under normal farming/ranching practices. DEM responds that the Respondent did not received the designation as farmer until 2018, after the violations were discovered. DEM argues further that the nature and extent of the alterations were well beyond that which would have been allowed, without permit, even assuming that the Respondent achieved farmer status.

The Respondent argues in its Post Hearing Memorandum that R.I. Gen. Laws § 2-1-22 does not prohibit a person or corporation from farming in a wetland while they are attempting acquire “farmer” designation from the DEM. This is correct. Any person may farm in a wetland as long as he or she does not commit violations of the Act. If a person has received the

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL AAD No. 18-004/FWE
PROGRAMMING FOUNDATION, INC.
NOTICE OF VIOLATION OCI-FW-17-129**

Page 11

designation of “farmer” he or she is entitled to greater leeway in terms of alterations of the wetlands than a person that has not acquired that designation. A “farmer” may alter or disturb a wetland by maintaining farm roads, farm ponds or engage in normal farming/ranching practices. A person who has not attained the status of “farmer” is not entitled to the exemptions to engage in normal farming/ranching practices which alter wetlands. A person who has not acquired the status of “farmer” may not alter or disturb a freshwater wetlands in any way without first obtaining a permit.

The Respondent engaged in actions which significantly altered or disturbed the freshwater wetlands on the subject premises in a significant way prior to the acquisition of the “farmer” status. I find that the testimony of DEM employee Shawna B. Smith to be credible and compelling. The strongest evidence presented at the Administrative Hearing was Ms. Smith’s Complaint Inspection Report dated September 26, 2017 (DEM Exhibit 4a and b). Her description of the extent of disturbance to the freshwater wetlands together with the photographs and sketches was presented in a professional and comprehensive way. This Hearing Officer was able to better understand the report and photos as a result of the view taken on May 20, 2019.

Respondent’s legal argument that it is entitled to engage in disturbance of the wetlands by engaging in normal farming/ranching practices within the wetlands while working towards acquiring “farmer” status is incorrect. The exemption to which a “farmer” is entitled is not available until after it has achieved that status. The farmer status can be achieved by farming in areas that are not wetlands and once the status is achieved it can move into a wetland. I find that the testimony of Respondent’s President, John Primeau, is confusing and incredible. I find that the alterations of the freshwater wetlands that were carried out by the Respondent were significant and without a permit in clear violation of the Act.

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL PROGRAMMING FOUNDATION, INC. AAD No. 18-004/FWE
NOTICE OF VIOLATION OCI-FW-17-129**

Page 12

ADMINISTRATIVE PENALTY

An administrative penalty of fifty thousand dollars (\$50,000.00) was assessed against the Respondent in the NOV. DEM employee David Chopy testified, at length, about how the penalty was calculated. He testified that the assessment was made by him in accordance with the Penalty Rules. Mr. Chopy was recognized as an expert in the assessment of administrative penalties and was only challenged by the Respondent in their Post Hearing Memorandum on the basis that it was based on hearsay. Respondent's argument is without merit as it is well established by the Administrative Procedures Act that hearsay is acceptable in administrative proceedings. I find that the administrative penalty of fifty thousand dollars (\$50,000.00) in the matter is fair and appropriate.

CONCLUSION

DEM has met its burden of proof that the Respondent has committed the violations of the Freshwater Wetlands Act as alleged in the NOV. Respondent caused significant alterations to the wetlands on the subject property without a permit. At the time of the alterations the Respondent had not obtained the status or designation as "farmer". The alterations were well beyond those that would have been allowed under "normal farming/ranching practices". Finally, the Administrative Penalty assessed is fair and was calculated in accordance with the Penalty Rules.

The Respondent's appeal should be denied and dismissed and the terms of the NOV should be sustained.

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL AAD No. 18-004/FWE
PROGRAMMING FOUNDATION, INC.
NOTICE OF VIOLATION OCI-FW-17-129**

Page 13

FINDINGS OF FACT

Based on the stipulations of the parties, the documentary and testimonial evidence, I make the following finds of fact:

1. The Administrative Adjudication Division has jurisdiction over the Respondent pursuant to R.I. General Laws § 42-17.1-1 *et seq.* and § 46-19-1 *et seq.*
2. The Property is located approximately 800 feet north of Hartford Pike, approximately 500 feet west of the intersection with Regina Drive, Assessor's Plat 24, Lot 31 in the Town of Scituate, Rhode Island (the "Property").
3. Respondent owns the Property.
4. On September 3, 2014, Respondent submitted to DEM an application to alter freshwater wetlands on the Property. The Application included, among other documents a plan the showed extensive wetlands on the Property and proposed altering wetlands in the southernmost portion of the Property.
5. On November 6, 2014, DEM issued an Insignificant Alteration Permit authorizing the alteration of certain wetlands in the southeastern most portion of the Property.
6. Respondent became a recognized farm by the USDA in April 2016.
7. On July 26, 2017, and September 26, 2017, DEM inspected the Property which uncovered alterations of wetlands that were outside the scope that was outlined in the Insignificant Alteration Permit.
8. Inspection of the Property by the Office of Compliance and Inspection on September 26, 2017, revealed the following unauthorized activities:
 - a. Clearing, grubbing, stumping, filling (in the form of at least soil, gravel, rocks, boulders, concrete bridge slabs and sediment), grading, and soil disturbances within a Swamp, Streams, Perimeter Wetlands and Riverbank Wetlands associated with the construction of a road. These activities altered approximately 38,300 square feet of freshwater wetlands;
 - b. Clearing, grubbing, stumping, filling (in the form of at least soil, gravel, rocks, boulders, logs, stumps and sediment), grading, excavating and soil disturbances within Swamp associated with the construction of a second road. These activities altered approximately 10,000 square feet of freshwater wetlands;
 - c. Ditching, diverting, filling (in the form of soil, gravel, rocks, boulders and sediment) and soil disturbances within a River (Rush Brook). These activities altered approximately 150 linear feet (1,500 square feet) of freshwater wetlands;

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL AAD No. 18-004/FWE
PROGRAMMING FOUNDATION, INC.
NOTICE OF VIOLATION OCI-FW-17-129**

Page 14

- d. Clearing, grubbing, stumping, filling (in the form of at least soil, rocks, mulch, logs, stumps and slash), grading, and soil disturbances within Swamp. These activities altered approximately 5 acres of freshwater wetlands; and
 - e. Clearing, Grubbing, stumping, filling (in the form of at least soil, mulch, rocks, boulders, logs, stumps and slash), grading, and soil disturbances within Riverbank Wetlands and Perimeter Wetlands. These activities altered approximately 8.5 acres of freshwater wetlands.
9. Respondent did not receive a permit from DEM to alter freshwater wetlands on the Property that were outside the scope of the November 6, 2014 Insignificant Alteration Permit.
 10. Respondent is not allowed to make alterations to the wetlands prior to obtaining "farmer" status without a permit.
 11. The alterations of the wetlands were beyond those which would have been permitted as "normal farm/ranching practices".
 12. Respondent was granted farm status by DEM in January 2018.
 13. On or about July 11, 2018, DEM issued a Notice of Violation alleging certain violations of the Wetland Regulations and the Freshwater Wetland Act.
 14. Respondent requested a timely appeal of the NOV.
 15. Respondent did accomplish or permit alterations of freshwater wetlands and did not receive the required permit or approval from DEM to alter these Freshwater Wetlands.
 16. DEM established in evidence that all five of Respondent's violations of R.I. Gen. Laws § 2-1-21 and the Wetland Regulations was determined to be Type I, Major Deviations from the standard.
 17. The department established in evidence the amount of the gravity of the violations in the NOV was \$50,000.
 18. The NOV served notice of the intent to assess an administrative penalty in the amount of \$50,000.
 19. An administrative penalty in the amount of \$50,000 Respondent's alterations of freshwater wetlands without the required permit or approval from the Department to alter these freshwater wetlands in not excessive.

CONCLUSIONS OF LAW

Based on the findings of fact I make the following conclusions of law:

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over Respondent.
2. DEM has jurisdiction over the freshwater wetlands located on Respondent's property.
3. The Respondent made a timely request for a hearing in accordance with R.I. Gen. Laws § 42-17.1-2.
4. The DEM acted within its legislative mandate in issuing the NOV because there were reasonable grounds to believe that there were violations at the Property.
5. DEM has reasonable grounds to believe that the Respondent and/or its agents violated the Freshwater Wetlands Act which warranted the issuance of the NOV to the Respondent.
6. The freshwater wetlands located on Respondent's property were altered without a wetlands alteration permit from DEM.
7. The Respondent is not entitled to alter freshwater wetlands under the "normal farming/ranching practices" until it has attained "farmer" designation.
8. DEM proved by a preponderance of the evidence that freshwater wetlands on the Property were altered in violation of R.I. Gen. Laws §2-1-21 and Rule 5.01 of the Wetland Regulations as alleged in the Notice of Violation dated July 11, 2018 (DEM Exhibit #5, Full).

Wherefore it is hereby:


ORDERED

1. Respondent's Appeal is DENIED and DISMISSED.
2. The terms of the NOV issued on July 11, 2018 shall be SUSTAINED.

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL AAD No. 18-004/FWE
PROGRAMMING FOUNDATION, INC.
NOTICE OF VIOLATION OCI-FW-17-129**

Page 16


Entered as an Administrative Order this 4th day of December 2019.



David Kerins
Chief Hearing Officer
Administrative Adjudication Division
235 Promenade Street, 3rd Floor, Rm 350
Providence, RI 02908
(401) 222-4700 Ext. 4600

CERTIFICATION

I hereby certify that I caused a true copy of the within Status Conference Order to be forwarded by first-class mail to: Peter J. Petrarca, Esquire, 330 Silver Spring Street, Providence, RI 02904; via interoffice mail to; Christina Hoefsmit, Legal Counsel, DEM Office of Legal Services, and David Chopy, Chief, Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908, on this 4 day of December 2019.



Mary Dalton

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Environmental Management pursuant to RI General Laws § 42-35-12. Pursuant to R.I. Gen. Laws § 42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL PROGRAMMING FOUNDATION, INC. AAD No. 18-004/FWE
NOTICE OF VIOLATION OCI-FW-17-129**

Page 17

Appendix

The following is a list of Full Exhibits:

Joint Exhibits

JOINT Exhibit 1 Full Stipulations filed April 2, 2019

DEM Exhibits

DEM Exhibit 1a Full Insignificant Alteration Permit dated November 6, 2014

DEM Exhibit 1b Full Approved Site Plan dated November 6, 2017 (oversized exhibit
– available for inspection at AAD)

DEM Exhibit 2 Full Site Inspection Report dated July 26, 2017

DEM Exhibit 3 Full Cease and Desist Letter dated August 2, 2017

DEM Exhibit 4a Full Complaint Inspection Report dated September 26, 2017

DEM Exhibit 4b Full Approved Site Plan with notes by Shawna Smith (oversized
exhibit – available for inspection at AAD)

DEM Exhibit 5 Full Notice of Violation dated July 11, 2018

DEM Exhibit 6 Full *Rules and Regulations Governing the Administration and
Enforcement of the Freshwater Wetlands Act* dated July 16,
2014

DEM Exhibit 7 Full *Rules and Regulations for Assessment of Administrative
Penalties* dated December 31, 2001

DEM Exhibit 8 Full Resume of Charles A. Horbert

DEM Exhibit 9 Full Resume of Shawna B. Smith

DEM Exhibit 10 Full Resume of Kenneth D. Ayars

DEM Exhibit 11 Full Resume of David E. Chopy

**RE: NORTH AMERICAN CATHOLIC EDUCATIONAL PROGRAMMING FOUNDATION, INC. AAD No. 18-004/FWE
NOTICE OF VIOLATION OCI-FW-17-129**

Page 18

Respondent's Exhibits

Respondent's Exhibit A	NACEPF's Certificate of Exemption Farm Equipment dated November 15, 2017
Respondent's Exhibit B	NACEPF's Farming Production Benefaction Receipts dated July 9 th – December 4 th , 2014
Respondent's Exhibit C	NACEPF's Farming Production Benefaction Receipts dated June 20 th – November 24 th , 2015
Respondent's Exhibit D	NACEPF's Farming Production Benefaction Receipts dated July 14 th – November 22 nd , 2016
Respondent's Exhibit E	NACEPF's Farming Production Benefaction Receipts dated June 28 th – November 14 th , 2017
Respondent's Exhibit M	Approved Site Plan with notes by John Primeau (oversized exhibit – available for inspection at AAD)