

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

IN RE: Frederick W. and Louise G. Williams
Notice of Violation No. C-2771

FINAL DECISION AND ORDER

Based upon the entire record and the hearing officer's Recommended Decision and Order dated January 7, 1992 as modified by the Order of Remand and by the Supplemental Recommended Decision and Order, I hereby find as follows:

FINDINGS OF FACT

1. The Respondents, Frederick W. and Louise G. Williams owned that property located at west of West Main Road, opposite utility pole no. 338, and identified as Tax Assessor's Plat 7, Lot 8, in the Town of Little Compton, Rhode Island at all times relevant to the instant hearing.
2. Respondent Frederick Williams filed an Application for a Preliminary Determination with the Division for their subject property on December 30, 1987.
3. The Division inspected Respondents' property on January 29, 1988 and made a Preliminary Determination as to the existence and extent of freshwater wetlands on said property.
4. The Division notified the Respondents on February 15, 1988 that a swamp/marsh complex and its associated fifty (50) foot perimeter wetlands were present on their property.

5. The Division inspected Respondents' property on December 6, 1988 and discovered the existence of freshwater wetlands alterations on Respondents property, consisting of clearing, grading, filling, stockpiling of debris, construction of a shed and portions of an individual sewage disposal system ("ISDS") and house within the swamp and its fifty (50) foot perimeter wetlands located on Respondents' property.

6. The Division issued a Cease and Desist Order to an individual working on Respondents' property (a Mr. Stephen Arruda) on December 27, 1988.

7. The Division issued a Notice of Violation and Order and Penalty to the Respondents dated December 30, 1988.

8. The Respondents filed a timely request for an administrative hearing on January 11, 1989.

9. State jurisdictional freshwater wetlands exist on Respondents' property, consisting of a wooded swamp and its associated fifty (50) foot perimeter wetlands.

10. The freshwater wetlands on Respondents' property had not been altered at the time of the Preliminary Determination inspection by the Division on January 29, 1988.

11. The freshwater wetlands on Respondents' property were altered by filling, construction and soil disturbance which occurred recently prior to the Division's inspection on December 6, 1988 (in response to a complaint received by the Division on November 7, 1988).

12. Said alterations occurred in and affected the character of the jurisdictional freshwater wetlands at the site, and will result in the permanent loss of wildlife habitat and the environmental and recreational values attributed to such wetlands area.

13. The freshwater wetlands on the subject property were altered after the enactment of the Act and without a DEM wetlands alteration permit and were therefore in violation of the Freshwater Wetlands Act.

14. Respondents' Preliminary Determination Application and Site Plan dated December 30, 1987 indicated that they were contemplating construction on the subject property similar to what the Division observed on December 6, 1988.

15. The Division's search of the Tax Assessor's records of the Town of Little Compton indicated that the Respondents were listed as the record owners of the subject property at the time of the alterations.

16. The measurements taken at the site by the Division located the alterations of freshwater wetlands on the Respondents' property.

17. The NOVAP issued to the Respondents' in the instant action involves the same property for which Respondents' had recently filed their Preliminary Determination Application.

18. The Division has jurisdiction over the freshwater wetlands located on the Respondents' subject property.

19. Restoration of the freshwater wetlands on Respondents' property is necessary in order to return the wetlands to their natural unaltered condition.

20. The Division had reasonable grounds to believe that the Respondents were in violation of the Freshwater Wetlands Act and was therefore warranted in issuing the NOVAP to the Respondents.

21. That the administrative penalty assessed against the Respondents in the total amount of Two Thousand Dollars (\$2,000.00) is not excessive and certainly reasonable and warranted under the circumstances.

22. That complete restoration of the wetlands on the site is necessary in order to restore the wetlands to their natural, unaltered condition.

CONCLUSIONS OF LAW

Based upon the above findings of fact, I conclude as follows:

1. The DEM has jurisdiction over the freshwater wetlands located on Respondents' property.

2. The freshwater wetlands located on Respondents' property were altered without a wetlands alteration permit from DEM.

3. The Division had reasonable grounds to believe that the Respondents were in violation of the Freshwater Wetlands Act which warranted the issuance of the NOVAP to the Respondents.

4. The Division has proved by a preponderance of the evidence that the Respondents through their agents requested, or at a minimum allowed, the alterations of the freshwater wetlands existing on their property.

5. The freshwater wetlands on Respondents' property were altered by Respondents or through their agents in violation of § 2-1-21 of the R. I. Gen. Laws and the regulations promulgated pursuant thereto, as alleged in the NOVAP dated December 30, 1988.

6. That the Department is entitled to the relief requested in Restoration Order and Penalty as set forth in the NOVAP.

7. That the NOVAP should be affirmed in its entirety (except as modified herein as to dates and times).

8. That the Respondents must comply with the Restoration Order as set forth in the NOVAP and completely restore the subject wetlands in accordance with the requirements of the Department's Division of Freshwater Wetlands no later than forty-five (45) days after the date of the Final Order herein.

9. That the Respondents must pay a total administrative penalty of Two Thousand Dollars (\$2,000.00) to the Department no later than ten (10) days after the date of the Final Order herein.

WHEREFORE, it is hereby

O R D E R E D

1. That the Notice of Violation and Order and Penalty issued to the Respondents dated December 30, 1988 be and is hereby sustained.

2. That the Respondents restore said freshwater wetlands to their state as of July 16, 1971 insofar as possible within forty-five (45) days of the date of the Final Order herein.

3. That the Respondents contact the Division of Freshwater Wetlands of the Department of Environmental Management prior to the commencement of restoration to ensure proper supervision and to obtain the required restoration details from the representative of said Division.

4. That the Respondents pay an administrative penalty in the sum of One Thousand Dollars (\$1,000.00) for

each of the two violations, making the total of the penalty assessments for said violations in the amount of Two Thousand Dollars (\$2,000.00). Such payment shall be in the form of a certified check made payable to the Treasurer, State of Rhode Island, and shall be delivered to the Director within ten (10) days of the date of the Final Order herein.

This constitutes a Final Agency Decision in the above matter.

February 17, 1992
Date

Louise Durfee
Louise Durfee
Director, Department of
Environmental Management
9 Hayes Street
Providence, RI 02908
(401) 277-6607

CERTIFICATION

I hereby certify that I caused a true copy of the within Final Order to be forwarded via regular mail to John B. Webster, Esq., Adler, Pollock & Sheehan Inc., 2300 Hospital Trust Tower, Providence, RI 02903; and via interoffice mail to Catherine Robinson Hall, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 17th day of February, 1992.

Paul Greene