

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

ORDER OF REMAND

After full consideration of the recommended decision and order, in the above-captioned matter, I agree with and hereby adopt the findings of fact numbered one through twenty (1-20) inclusive.¹ I also accept the hearing officer's assessment of witness credibility. Based upon those findings, however, I have concluded as a matter of law that the quantum of evidence of record on the issue of whether Respondent allowed or directed the freshwater wetlands alterations met the preponderance of the evidence standard.

Clearly, there is sufficient circumstantial evidence of record to conclude that the wetlands alterations were conducted through the Respondents' agent at their direction. The circumstantial evidence is as follows: First, the Respondent submitted a preliminary determination application and site plan to the Division which was received by the Department on December 30, 1987. Second, the wetland in issue was owned by Respondent at the time the Respondent submitted a preliminary determination application (the "Application") and at the time the wetlands were altered. Third, in the Application, the Respondent proposed to build a house on the property.

¹ Finding of Fact numbered 21 is properly a conclusion of law.

FILED DEMAND

Fourth, Mr. Tyrell, a biologist in the Division observed construction on December 6, 1988. Fifth, the construction observed by Mr. Tyrell was similar to that which was proposed in the Respondent's Application. Sixth, the alterations alledged in the Notice of Violation include a house foundation, a shed, and a large filled area with trenches which appeared to be construction of an individual sewage disposal system ("ISDS"). Seventh, during the course of the December 27, 1988 inspection, Mr. Tyrell observed persons dropping off lumber and building materials on the site. Based upon these facts as found by the hearing officer, it is reasonable to conclude that the property improvements in the wetlands on the site were undertaken at the request of the Respondent.

This is not a case where the wetland site was difficult to locate and was altered by dumping, or another activity which did not benefit the property owner. Here the facts are quite the reverse; the Respondents not only owned the property on a main throughfare in Little Compton, but advised the department that they wished to build a house on the property. The site plans for the house were submitted to the department as a part of the Application. Construction began in accordance with the plans submitted. A department employee, observed the construction and observed a house foundation and another outbuilding. The construction

observed by the department employee was similar to that submitted in the site plan.

Based solely on the facts as found by the Hearing Officer, I conclude as a matter of law that the Division 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 on their property.

CONCLUSIONS OF LAW

Based upon the foregoing facts and testimony and documentary evidence of record, I hereby adopt the conclusions of law numbered one through three (1-3) as found by the hearing officer. I also conclude as a matter of law that:

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.

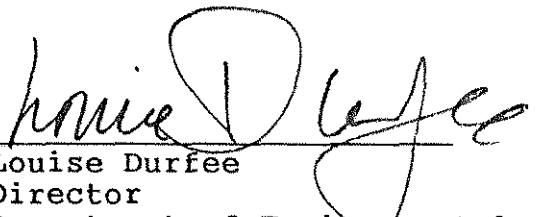
Although I am reluctant to delay the final decision in this matter in light of the above conclusion, there are

two (2) additional issues which I believe should properly be reviewed by the hearing officer in the first instance: (1) whether the administrative penalty was properly assessed in accordance with the Rules and Regulations for Administrative Penalties and (2) the terms of the Order to restore the altered wetlands.

Because the hearing officer has provided me with such a carefully considered, well written recommended decision, I expect he will expeditiously provide me with recommendations on the outstanding issues.

This matter is, therefore, remanded to the Hearing Officer.

1/31/92
Date


Louise Durfee
Director
Department of Environmental
Management
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CERTIFICATION

I hereby certify that I caused a true copy of the within Order of Remand to be forwarded, registered mail, return receipt requested to John B. Webster, Esquire, Adler, Pollock & Sheehan, Inc., 2300 Hospital Trust Tower, Providence Rhode Island 02903 and via interoffice mail to Attorney Catherine Robinson Hall, Office of Legal Services, 9 Hayes Street, Providence, Rhode Island 02908 this 31st day of January, 1992.

