

9/28/92

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

IN RE: Justin Parrillo  
Notice of Violation No. C89-0144

DECISION AND ORDER ON RESTORATION AND PENALTY

This matter is before the Hearing Officer pursuant to the Freshwater Wetlands Act R.I.G.L. § 2-1-18 et seq., as amended (hereinafter "Act"), and R.I.G.L. § 42-17.1-2 and Chapter 42-17.6; statutes governing the Administrative Adjudication Division R.I.G.L. § 42-17.7-1 et seq., as amended; the Administrative Procedures Act R.I.G.L. § 42-35-1 et seq., as amended; the duly-promulgated Rules and Regulations Governing the Enforcement of the Freshwater Wetlands Act; and the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters ("DEM AAD Rules").

The Division of Groundwater and Freshwater Wetlands ("Division") of the Department of Environmental Management ("DEM") issued a Notice of Violation and Order ("NOVAO") to Justin Parrillo ("Respondent") on August 23, 1989, which was received by Respondent on August 28, 1989.

The NOVAO alleged a violation of § 2-1-21 of the General Laws of Rhode Island, 1956, as amended, in that the Respondent proceeded to alter freshwater wetlands in one (1) instance without having first obtained the approval of the Director of the Department of Environmental Management. Said NOVAO alleged

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specifically that an inspection of property owned by Respondent and located east of Brookdale Street, approximately 100 feet north of Wilbur Avenue, opposite pole #2, Assessor's Plat 18, Lot 222 and 223 in the City of Cranston, Rhode Island, on 1 August 1989 at 0930 revealed that in violation of RIGL Section 2-1-21, Respondent did accomplish or permit alterations of freshwater wetlands by:

Instance (1)

Foundation construction, filling, vegetative clearing, grading and creating soil disturbance with a 100 year floodplain and within a riverbank wetland, that area of land within 200 feet of a flowing body of water greater than 10 feet wide (Meshanicut Brook), resulting in the alteration of approximately 10,500 square feet of wetland.

Said NOVAO ordered the Respondent pursuant to RIGL Sections 2-1-23, 2-1-24, 42-17.1-2(v) and 42-17.6 to cease and desist immediately from any further alteration of the above-described freshwater wetland(s), and to restore said freshwater wetland to their state as of July 16, 1971, insofar as possible before September 30, 1989; and also imposed an administrative penalty in the sum of One Thousand Dollars (\$1,000.00) to be paid within ten (10) days of receipt of said NOVAO.

Respondent filed a timely request for an administrative hearing which was received by the Division on August 29, 1989.

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The Administrative Adjudication Division conducted a Prehearing Conference ("PHC") and the requisite PHC Record was entered on November 21, 1991 by the Hearing Officer who conducted said PHC. No requests to intervene were presented.

After the PHC, Summary Judgment was granted in favor of the Division as to Respondent's responsibility (or liability) for altering freshwater wetlands without the prior approval of the Division. Division's Motion for Summary Judgment denied was as to the Penalty Assessment and the Order of Restoration, and the adjudicatory hearing was held on April 20, 1992 to address the issues concerning restoration and penalty. The Hearing Officer was in receipt of the post-hearing briefs on or about June 9, 1992.

The Division bore the burden of proving by a preponderance of the evidence that the Department is entitled to the relief requested in the Restoration Order and Penalty Assessment as set forth in the NOVAO.

The instant action (NOV No. C89-0144) had previously been consolidated with an Individual Sewage Disposal Systems ("ISDS") Suspension matter (which was resolved by Consent Agreement after the PHC and prior to the hearing). The stipulated facts and documents introduced pursuant to the PHC Record pertained to both matters and are included in their entirety in this Decision.

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The following stipulations of fact were entered by agreement of the parties:

1. On November 7, 1986, Justin Parrillo submitted an Individual Sewage Disposal System ("ISDS") Application numbered 8607-305, to the Division of Groundwater and Freshwater Wetlands for the construction of an ISDS on his property located on Brookdale Street, Cranston, Rhode Island, Plat 18, Lots 222 and 223, which Application was thereafter approved on or about November 25, 1986.
2. Justin Parrillo ("Respondent") filed a freshwater wetlands Preliminary Determination Application with the Department on June 17, 1987 for alterations proposed on the Respondent's property located on Brookdale Street, Cranston, Rhode Island, Plat 18, Lots 222 and 223.
3. The Department reviewed the Respondent's application and determined that the application constituted a significant alteration of freshwater wetlands.
4. The Department notified the Respondent of its determination by correspondence dated August 11, 1987.
5. On January 13, 1989, Justin Parrillo submitted a second ISDS Application, numbered 8907-2, to the Division of Groundwater and Freshwater Wetlands as a renewal of permit number 8607-305. This second application was approved on or about February 6, 1989.
6. A Notice of Violation and Order ("NOVAO") was issued to the Respondent on August 23, 1989.
7. Respondent received this NOVAO on August 28, 1989.
8. The NOVAO was recorded in the Cranston Land Evidence Records on August 24, 1989.
9. At the time that the NOVAO was issued, the Respondent was the legal owner of the property located east of Brookdale Street, approximately 100 feet north of Wilbur Avenue opposite pole No. 2, in Cranston, Rhode Island, identified as assessor's plat 18, Lots 222 and 223, the site.

10. Respondent duly filed a request for an adjudicatory hearing on August 29, 1989 and September 21, 1989.
11. On December 21, 1990, the Division of Groundwater and Freshwater Wetlands issued a Notice of Suspension of Individual Sewage Disposal Permit in regard to Respondent's permit, numbered 8907-2.
12. On December 30, 1990, Justin Parrillo duly filed a request for an adjudicatory hearing in regard to the suspension of ISDS Permit 8907-2.
13. As of the date of this Memorandum, the Respondent has not requested, nor has the Department performed any "Bottom" or "Cover" inspections in regard to the ISDS proposed by permit 8907-2, nor has any Certificate of Conformance been issued in regard to the installation of such a system.
14. Respondent engaged in foundation construction, filling, vegetative clearing, grading and creating soil disturbance, within a riverbank wetland, that area of land within 200 feet of a flowing body of water greater than 10 feet wide (Meshanicut Brook).
15. The Respondent did not file a formal permit application relating to the alteration of freshwater wetlands with the Department.
16. A status conference was held on September 24, 1990.

The following documents were admitted into evidence as joint exhibits:

- JT. 1. Resume of Harold K. Ellis (3 pp.).
- JT. 2. Resume of Dean H. Albro (3 pp.).
- JT. 3. Resume of David Vitello (3 pp.).
- JT. 4. Resume of Stephen G. Morin (2 pp.).
- JT. 5. Request for Verification of Water Table (1 p.), numbered W8607-222, dated April 9, 1986.
- JT. 6. Wet Season Verification (1 p.), locus sketch dated April, 1986.

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- JT. 7. Designer's Determination of Maximum Groundwater Level (1 p.), dated July 8, 1986 and signed by Nicholas Veltri.
- JT. 8. ISDS Application (1 p.), numbered 8607-305, applied for on November 7, 1986, granted November 25, 1986.
- JT. 9. Site plan entitled, "Proposed Sewage Disposal System, Johnston, Rhode Island, A.P. 18, Lots 222 and 223, for Justin Parrillo, by N. Veltri Survey, Inc.," dated September 6, 1986, revised October, 1986, received by the Freshwater Wetlands Section of the Division of Groundwater and Freshwater Wetlands June 17, 1987, (1 p.).
- JT. 10. Freshwater Wetlands ("FWW") Preliminary Determination Application (No. 87-457D), received from Justin Parrillo and dated June 17, 1987, (1 p.).
- JT. 11. FWW review sheet by Cathy Johnson, dated July 13, 1987 (2 pp.).
- JT. 12. Correspondence to Justin Parrillo from Dean H. Albro, dated August 11, 1987 (2 pp.).
- JT. 13. Correspondence to Dean H. Albro from Nicholas Veltri, date received January 6, 1988 (1 p.).
- JT. 14. Correspondence to Nicholas Veltri from Dean H. Albro, dated January 15, 1988 (1 p.).
- JT. 15. ISDS Application (1 p.), numbered 8907-2, applied for on January 13, 1989, granted February 6, 1989.
- JT. 16. Site plan entitled, "Proposed Sewage Disposal System," Johnston, Rhode Island, A. P. 18, Lots 222 and 223, for Justin Parrillo, by N. Veltri Survey, Inc.," dated September 6, 1986, revised October 1986, approved by the ISDS Section of the Division of Groundwater and Freshwater Wetlands November 25, 1986 (permit No. 8607-305) and February 6, 1989 (permit No. 8907-2) (1 p.).
- JT. 17. Sewage Application Review sheet (1 p.), dated January 20, 1989 and signed by Donald L. Crowe.

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- JT. 18. Designer Attestation (1 p.), dated January 30, 1989 and signed by Nicholas Veltri.
- JT. 19. FWW complaint inspection report by David Vitello dated August 1, 1989 (3 pp.).
- JT. 20. Two (2) photographs of the subject site, taken by David Vitello, dated August 1, 1989 (1 p.).
- JT. 21. Biological Inspection Report by David Vitello, dated August 3, 1989 (3 pp.).
- JT. 22. Recommendations to Enforcement Supervisor (FWW) by David Vitello, dated August 7, 1989 (1 p.).
- JT. 23. FWW Notice of Violation and Order, dated August 23, 1989, Certificate of Service and Authenticity and copy of return receipt for NOVAO, signed by Justin Parrillo, August 28, 1989 (5 pp.).
- JT. 24. Request for Adjudicatory Hearing, correspondence from Justin Parrillo, date received by the Department August 29, 1989 (1 p.).
- JT. 25. Correspondence to Attorney Sandra Calvert from Attorney Valentino D. Lombardi, dated September 19, 1989 (1 p.).
- JT. 26. Site Inspection Report, by David Vitello, dated September 7, 1990 (1 p.).
- JT. 27. Notice of Suspension of Individual Sewage Disposal System Permit (2 pp.), dated December 21, 1990 and signed by Stephen G. Morin.
- JT. 28. Request for Hearing on Suspension of Individual Sewage Disposal System Permit (1 p.), dated December 30, 1990 and signed by Justin Parrillo.

The following documents were submitted by the Respondent as full exhibits:

- Resp. 1. Sematic drawing of the proposed sewage disposal system highlighted by applicant's expert.

- Resp. 2. Flood Insurance study by the City of Cranston (2A) Flood Boundary and Floodwater Map City of Cranston November 1, 1984 (2B).
- Resp. 3. Respondent witness list (3A). Curriculum vitae Nicholas Veltri (3B). Curriculum vitae John Travassos (3C). Curriculum vitae Edward Capone (3D).

Dean Albro, Chief of the Division of Freshwater Wetlands, was the first witness called by Division. He has a Bachelor of Science Degree in Resource Development (Natural Resources) from the University of Rhode Island, with a concentration in wildlife management. Mr. Albro testified that the Respondent, Justin Parrillo, submitted a Preliminary Determination Application (No. 87-457D) for the subject property to the Department on June 17, 1987. The Division staff inspected the site in question and a staff biologist determined the types of wetlands present on the site. Mr. Albro reviewed the file and reports, discussed this matter with staff, and determined that the project proposed for the site represents a significant alteration of a Freshwater Wetlands, basically because the proposed project falls within the 200 foot riverbank wetland associated with Meshanicut Brook, a Class B perennial river greater than 10 feet wide. The filling in associated with the ISDS installation is within 25 feet of said river and the disturbed area less than 10 feet from said river. This would impact the wetlands through (1) loss of wildlife habitat, (2) degradation of water quality, and (3) potential loss of flood storage capabilities. On August 11,

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1989, Mr. Albro sent a letter to the Respondent informing him of the foregoing, and notifying him that a FORMAL application was required.

The Division received a letter from Nicholas Veltri, R.L.S., dated January 5, 1988 (Re: Application No. 87-457D) stating that he and Mr. Parrillo would like to meet with Mr. Albro to discuss the possibility of other design alternatives to avoid filing a formal application. This letter from Mr. Veltri was in response to the Division's notification (that a formal application was required) that was sent to the Respondent and the ISDS Section.

On January 15, 1988, Mr. Albro sent a letter to Mr. Veltri (and copy to Respondent) stating that they would not benefit from a meeting concerning the Preliminary Determination process, and that it was necessary to follow the formal application process to proceed toward obtaining approval for the proposed alterations on the site.

Mr. Albro testified in cross-examination that he was not surprised that the ISDS Section issued a permit to Mr. Parrillo in 1989 (despite their receipt of the Preliminary Determination from the Freshwater Wetlands Section) since the ISDS Section issued the permit because it had been previously approved.

The next witness called by the Division was Harold K. Ellis, who was qualified as an expert in wetlands ecology, aerial photograph interpretation and as a natural resource specialist. It was this witness's testimony that as enforcement supervisor for the Freshwater Wetlands Section he issued the NOVAO in the instant matter as a result of his review of the reports made by David Vitello (a Senior Natural Resource Specialist with the Division) and also his discussions with Mr. Vitello. He testified that Respondent altered 10,500 square feet of wetland by constructing a house foundation and retaining wall and grading within 200 feet of Meshanicut Brook and in the 100 year floodplain. The retaining wall was constructed about 18 to 20 feet away from said brook and some of the soil disturbance was closer to the brook.

Mr. Ellis explained that pursuant to the Rules and Regulations, the Division utilized the criteria set forth therein to determine that the maximum penalty of \$1,000.00 is appropriate for the subject violation. The criteria considered by the Division included the actual or potential harm to the public safety and health, the amount necessary to deter future noncompliance and to assure compliance, and whether the person took reasonable steps to mitigate or prevent the harm that might be occasioned by said actions. This witness stated that the Division took into consideration the actual amount of wetland

altered (10,500 square feet), the nature and type of the alteration (clearing, filling, excavation and construction) and the water quality classification of the river, and based upon these factors, they determined that the violation came within the "major" category under the Regulations. The amount of the riverbank wetland encroached upon by said alterations, and its proximity to the river made it more severe, and a greater risk to the public health, safety and welfare, and to the environment. The alterations also displaced floodplain (as they took place within the 100 year floodplain area as established on the FEMA maps). The Division determined that the maximum penalty allowed should be imposed in order to ensure compliance and to deter future noncompliance, especially since said alterations were performed by Respondent despite his previous knowledge of the wetland determinations. Further, no steps were taken by Respondent to mitigate the harm created by construction of the foundation and walls; and the public interest would not be served if the public perceived that such alterations are allowed without a permit.

It was Mr. Ellis's opinion that in order to restore the wetlands to their original state it is necessary to remove the house foundation, retaining walls and associated fill, regrade the site back to original contours, re-seed and stabilize the area and plant shrubs and trees to establish sediment control.

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This witness acknowledged that the foundation would have to be sacrificed in order to move the house; however, he felt that this should be required and that the \$1,000.00 penalty was necessary.

It was brought out in cross-examination of Mr. Ellis that he visited the site on one occasion (after the NOVAO) and that he had relied on Mr. Vitello, as well as various documents which this witness reviewed. He acknowledged that there is a house next door to the subject site, but he did not know its proximity to the brook.

Justin Parrillo was the only witness called by the Respondent. Mr. Parrillo stated that he purchased the subject property in 1985/1986 to build one house which he intended to sell.

It was the testimony of this witness that he hired Nicholas Veltri to handle all matters concerning the ISDS. He was unable to recall filling out the Freshwater Wetlands Preliminary Determination Application No. 87-457D, and he could not remember receiving the letter sent to him by Dean Albro dated July 13, 1987. Also, he was not clear as to whether he had ever seen the letter from Dean Albro to Nicholas Veltri, dated January 15, 1988 (although a copy had been sent to him). The explanation offered by Mr. Parrillo as to his not seeing these

documents (or as a possible problem affecting receipt of same) was that he had major chaos in his life during the period from August, 1987 to February, 1988.

Mr. Parrillo acknowledged receipt of the instant NOVAO dated August 23, 1989; however, he could not remember if it was sent by certified mail. He stated that he was surprised by it because he thought he was doing everything right since Mr. Veltri was doing everything. Also, the "leachfield paper" was received by him, and Cranston issued a permit in the beginning of 1989.

It was elicited in cross-examination of Mr. Parrillo that he personally filled out and signed the Preliminary Determination application and that he did not put Mr. Veltri's address on said form. Also, Mr. Parrillo acknowledged that he personally renewed the ISDS application although he stated that Mr. Veltri was in charge of all permits and applications. Mr. Parrillo's testimony was vague as to his recollection concerning receipt of copies of documents from Mr. Veltri, as well as letters from the Division despite the fact that he kept a file for this particular property. He stated that he could not remember whether he did not receive said letters or whether they were misplaced.

Respondent's argument that the Division failed to prove that Respondent's actions constitute a significant alteration that will cause random, unnecessary and/or undesirable destruction of freshwater wetlands pursuant to the Wetlands Rules is flawed. Respondent maintains that the Division failed to provide any evidence to support the adverse impact of Respondent's activities on the wetlands and that Division ignored certain factors and failed to consider the indicators specified in § 5.03(c) of the Wetlands Rules. The procedure referred to by Respondent pertains to FORMAL APPLICATIONS (Rule 5.00) and should not be confused with PRELIMINARY DETERMINATIONS (Rule 4.00). The factors to be considered to determine if a proposed alteration will cause random, unnecessary and/or undesirable destruction of freshwater wetlands pertain to the Policy for Denial of Approval of a Formal Application (Rule 5.03). Respondent was notified by the Division in response to Respondent's application for Preliminary Determination) that wetlands were present on the subject property and that proposed project represented a significant alteration of a wetland. This notification informed Respondent of the reasons for Divisions conclusions, the adverse impacts that would result from the proposed project and that a FORMAL application was required. The requisite form and a copy of the Freshwater Wetlands Act was enclosed with said notice. However, Respondent failed to comply

with said requirements and instead proceeded with construction of said house, retaining walls and related activities in violation of the Wetlands Act. The factors which Respondent claims the Division ignored apply to criteria to be considered in determinations as to whether a permit should be issued once a formal application has been filed. Said formal application matters involve different procedures, determinations and burdens.

The Division's uncontroverted testimony established that the alterations are significant and will result in adverse impacts upon the subject wetland by loss of wildlife habitat, degradation of water quality and potential loss of flood storage capabilities. The evidence abundantly demonstrates the value of the subject wetlands and the substantial adverse impact of said unpermitted alterations.

It is also argued by Respondent that the Division should be estopped from enforcing the terms of the NOVAO because of the issuance of an ISDS Permit in violation of its own Rules. Respondent maintains that he relied in good faith upon certain representations made by the Division that he was in compliance with all necessary regulations and permits and therefore he should not suffer due to Division's negligence in issuing an ISDS permit. This argument is without merit.

The case cited by Respondent to support his argument, Kelly v. Railroad Retirement Board, 625 F.2d 486 (1980), is clearly distinguishable from the present matter. The court in Kelly held that the Railroad Retirement Board unilaterally violated its own rules by independently obtaining an additional medical opinion concerning the applicant's condition (after the oral hearing and before decision) without informing applicant and without giving her the chance to rebut it. Such action clearly violated the Board's regulations, which place the burden on the agency to notify an applicant, summarize the newly acquired evidence for applicant and afford applicant an opportunity to refute it. Therefore, the court disregarded this "evidence" in its review of the record for substantial evidence to support the agencies decision. Such conduct by the Board was deemed unjust and the resultant action nullified since "[F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights." "Secrecy is not congenial to truth-seeking . . ." Anti-Fascist Committee v. McGrath, 341 U.S. 123 (1951).

The ISDS Rules mandate that ISDS systems should not be approved if they are located within certain freshwater wetlands; however, this was clearly intended as a restriction or prohibition to prevent Respondent from proceeding under these circumstances and certainly not intended to protect or benefit Respondent.

SD 2.16(a) of the ISDS Rules provides that approval for ISDS systems that are located within certain freshwater wetlands "will not be issued until the Freshwater Wetlands Section of the DEM issues a wetlands permit or determines that the Wetlands Act does not apply to the proposed construction, alteration, installation or repair."

SD 2.16(b) provides that the applicant may request a determination whether the Wetlands Act applies to the proposed construction, etc., and that such request may be submitted with the ISDS application to the ISDS Section.

SD 2.16(c) provides that the ISDS Section may request such a determination but that this shall not relieve the applicant of the primary responsibility for requesting a wetlands applicability determination and for obtaining a wetlands permit if required.

SD 2.16(d) provides that if the Freshwater Wetlands Section determines that the proposed construction, etc., is a significant alteration, it shall be the applicant's responsibility to make application for, and obtain a permit to alter wetlands from the Freshwater Wetlands Section.

It is apparent from a reading of said Rules that it is Respondent's obligation to apply for and obtain a permit from the Freshwater Wetlands Section. Respondent filed the Preliminary Determination Application and was notified of the Freshwater Wetlands Section's determination that his proposal represented a SIGNIFICANT ALTERATION of a freshwater wetland and that a FORMAL APPLICATION was required.

The Rules leave no doubt that it is Respondent's responsibility to file a formal application for a wetlands permit, and the Respondent should not be allowed to avoid the consequences of his failure to comply with the statute and

rules. Respondent's testimony concerning his alleged impression that all environmental permits had been met was vague and unconvincing. Respondent attempts to place the blame for his violation on Division, and he suggests as an additional excuse that his failure to file a FORMAL APPLICATION resulted from his reliance on his professional engineer. However, Respondent's testimony amounted to mere innuendos, and the evidence does not support these assertions.

Respondent had been building homes for a considerable period of time, and it was Respondent personally who filed the Preliminary Determination Application. The circumstances resulting from Respondent's activities and the substantial expense involved in complete removal of the structure and attendant restoration are, indeed, unfortunate; however, they cannot be attributed to anyone other than the Respondent. The Respondent's testimony concerning the responsibility for his actions is flimsy at most and represents an attempt to avoid the consequences resulting from his failure to comply with the law and Regulations governing this matter.

The testimony of the Division's witnesses was uncontroverted, and I find same to be credible and compelling. Mr. Ellis testified that the alteration was determined to be a major violation and the maximum penalty of \$1,000.00 was properly assessed in this matter. The alterations affected

10,500 square feet of wetlands within a 200 foot riverbank and the 100 year floodplain. The retaining wall was constructed within 18 to 20 feet of the river and the soil disturbance was even closer. The alteration involved excavation and building of structures, in addition to clearing and filling, within the freshwater wetland.

The evidence clearly establishes that the Division appropriately considered the following factors in determining the amount assessed as the administrative penalty in the NOVAO:

1. The actual and potential impact of Respondent's noncompliance on the public health, safety, welfare and the environment.
2. The extent and scope of the unpermitted activities conducted and the actual and potential damages to the 200 foot riverbank wetland and the 100 year floodplain caused by alterations which resulted in the disturbance of approximately 10,500 square feet of wetland.
3. The amount of the penalty necessary to assure immediate and continued compliance.
4. The amount of the penalty necessary to deter future noncompliance by the person assessed such penalty and by other similarly regulated persons.
5. The types of vegetation affected by said alteration, the "proximity" of said alterations to the river, the water quality class of the river and the risks of erosion on same resulting from the unpermitted alterations and the failure to remedy and mitigate whatever harm might have been done as a result of such noncompliance.
6. The public interest served by uniform enforcement of the statute and regulation.

7. The administrative penalty for said violation was calculated according to the "Penalty Matrix" developed for Freshwater Wetlands pursuant to the Rules and Regulations for Assessment of Administrative Penalties; and based upon the technical evaluation of the circumstances involved, the actual or potential risk of harm to the public health, safety, welfare or the environment caused or threatened by the violation, the Division assessed the maximum penalty allowed for this violation, viz., One Thousand Dollars.

The Respondent offered no evidence to show that the penalty imposed was excessive. The Division's testimony that said penalty was reasonable under the circumstances and that it was assessed in accordance with the proper relevant factors was not refuted by the Respondent.

It was previously established by the prior Summary Judgment in this matter that the Respondent's activities resulted in the alteration of approximately 10,500 square feet of freshwater wetlands on Respondent's property without a DEM wetlands alteration permit in violation of the Freshwater Wetlands Act. The evidence presented by Division at the hearing clearly established that said alterations were substantial and significant. The uncontradicted testimony of Division's witnesses amply demonstrated that the Respondent should be required to completely restore said premises and that the administrative penalty of \$1,000.00 was reasonable and warranted.

ADDITIONAL FINDINGS OF FACT

The Findings of Fact pertaining to Respondent's liability (responsibility for altering freshwater wetlands in violation of the statute) numbered 1 through 13 are set forth in the Decision and Order granting Division's Motion for Partial Summary Judgment and are incorporated herein by reference. After review of the entire record in this matter, I find the following additional findings of fact pertaining to restoration and penalties:

14. That complete restoration of the wetlands on the site is necessary in order to restore the wetlands to their natural, unaltered condition.
15. That the administrative penalty assessed against the Respondent in the sum of One Thousand Dollars (\$1,000.00) is not excessive and is reasonable and warranted under the circumstances.

ADDITIONAL CONCLUSIONS OF LAW

The Conclusions of Law pertaining to Respondent's liability (responsibility for altering freshwater wetlands in violation of the statute) numbered 1 through 3 are set forth in the Decision and Order granting Division's Motion for Partial Summary Judgment and are incorporated herein by reference. Based upon the foregoing and the entire record, I make the following additional Conclusions of Law:

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

5. That the NOVAO should be affirmed in its entirety (except as modified herein as to dates and times).
6. That the Respondent must comply with the Restoration Order as set forth in the NOVAO 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 in this matter.
7. That the Respondent must pay an administrative penalty of One Thousand Dollars (\$1,000.00) to the Department no later than ten (10) days after the date of the Final Order in this matter.

Based upon the entire facts and testimonial and documentary evidence of record and the Conclusions of Law as contained in the Decision and Order on Division's Motion for Partial Summary Judgment dated March 19, 1992, and as additionally set forth herein, I recommend that the Order as hereinafter set forth be adopted as a Final Order.

Wherefore, it is hereby

ORDERED

1. That the Notice of Violation and Order and Penalty issued to the Respondent dated August 23, 1989 be and is hereby sustained.
2. That the Respondent 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 Respondent 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 representatives of said Division.

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4. That the Respondent pay an administrative penalty in the sum of One Thousand Dollars (\$1,000.00) for said violation within ten (10) days of the date of the Final Order herein. Such payment shall be in the form of a certified check made payable to the order of the Rhode Island General Treasurer and shall be made directly to:

Rhode Island Department of Environmental Management  
Office of Business Affairs  
22 Hayes Street  
Providence, RI 02908

I hereby recommend the foregoing Supplemental Recommended Decision and Order to the Director for issuance as a Final Order.

August 28, 1992



Joseph F. Baffoni  
Hearing Officer  
Department of Environmental Management  
Administrative Adjudication Division  
One Capitol Hill, 4th Floor  
Providence, RI 02908  
(401) 277-1357

Entered as a Final Order this \_\_\_\_\_ day of \_\_\_\_\_,  
1992.

9/4/92

\_\_\_\_\_  
Louise Durfee  
Department of Environmental Management  
9 Hayes Street  
Providence, RI 02908

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CERTIFICATION

I hereby certify that I caused a true copy of the within Final Order to be forwarded via regular mail, postage prepaid to Robert S. Powers, Esq., McGovern, Noel & Benik, P.C., 321 South Main Street, P. O. Box 819, Providence, RI 02901-0819 and via interoffice mail to Brian A. Wagner, Esq., and Catherine Robinson Hall, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 and Robert Silvia, Office of Business Affairs 22 Hayes Street, Providence, RI 02908 on this \_\_\_\_\_ day of \_\_\_\_\_, 1992.

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