



STATE OF RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
BUREAU OF ENVIRONMENTAL PROTECTION
OFFICE OF COMPLIANCE AND INSPECTION
235 Promenade Street, Suite 220
Providence, RI 02908-5767

CERTIFIED MAIL

April 19, 2019

Mill Road Realty Associates, LLC
Kristen Lisi, Registered Agent
37 Mill Road
Foster, RI 02909

91 7199 9991 7039 8089 8253

In re: **NOTICE OF INTENT TO ENFORCE**
OC&I Case Number: **FW-18-116**

Ms. Lisi:

Enclosed please find a Notice of Intent to Enforce ("NOIE") for Freshwater Wetland and Water Pollution (RIPDES) violations that have been documented on property owned by Mill Road Realty Associates, LLC (the "Respondent"), which is located at 37 Mill Road (Wright's Auto Parts); between 20 feet and 980 feet generally southeast of Mill Road and approximately 2,100 feet southwest of the intersection of Mill Road and King Road (center of Property), Assessor's Plat 12, Lot 71, in the Town of Foster, Rhode Island.

A written response is required within ten (10) days, notifying this Office of your client's (the Respondent's) intentions regarding compliance with the required actions stipulated in the NOIE. Failure to comply with the requirements of this Notice may result in the issuance of a formal enforcement action, which would include administrative penalties of up to \$5,000 for each violation pursuant to Rhode Island General Law, Chapter 42-17.6 and the Rhode Island Code of Regulations titled Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1).

Site Sketches for this case have been attached to the NOIE to assist you in understanding the nature and extent of the wetland violations identified on the above referenced Property. Please contact Katherine Morgan by telephone at (401) 222-1360, extension 7255, or via e-mail at katherine.morgan@dem.ri.gov, if you have any questions concerning the NOIE.

Sincerely,

Bruce S. Ahern, Principal Environmental Scientist
Wetlands Compliance Program
Office of Compliance and Inspection

xc: Stephen Tyrell, Supervising Environmental Scientist
Katherine Morgan, Environmental Scientist
Patrick Hogan, Principal Civil Engineer
Mill Road Realty Associates, LLC, w/Attachments

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

IN RE: Mill Road Realty Associates, LLC

**OC&I FILE NOS. FW-18-116
& WP-19-28**

NOTICE OF INTENT TO ENFORCE

A. Introduction

You are hereby notified that the Director of the Department of Environmental Management (the "Director" of "DEM") has reasonable grounds to believe that the above-named party ("Respondent") has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) The property that is subject to this Notice is located at 37 Mill Road (Wright's Auto Parts); between 20 feet and 980 feet generally east/southeast of Mill Road and approximately 2,100 feet southwest of the intersection of Mill Road and King Road (approximate center of Property), Assessor's Plat 12, Lot 71, in the Town of Foster, Rhode Island (the "Property").
- (2) Respondent is the owner of the Property.
- (3) On September 10, 2018 and January 16, 2019, representatives of the DEM performed inspections of the Property. The inspections revealed the following:
 - (a) Clearing, filling (in the form of at least soil material, rocks, boulders, tree waste debris, vehicles and vehicle parts, and possible solid waste debris), grading, creating surface disturbance, and storing salvage vehicles within a **Swamp**. These activities have resulted in the unauthorized alteration of approximately 3,000 square feet of Freshwater Wetland;
 - (b) Clearing, filling (in the form of at least soil material, rocks, boulders, tree waste debris, vehicles and vehicle parts, and possible solid waste debris), grading, creating surface disturbance, storing salvage vehicles, and installing/constructing a fence/gate and an access driveway/road within a **50-Foot Perimeter Wetland (PW)**. These activities have resulted in the unauthorized alteration of approximately 6,500 square feet of Freshwater Wetland; and
 - (c) Storing salvage vehicles, vehicle parts, trailers/containers, machinery, equipment, and other debris, and creating surface disturbance within a **200-Foot Riverbank Wetland (RBW)**. This activity has resulted in the unauthorized alteration of approximately 17,000 square feet of Freshwater Wetland.

- (4) On March 26, 2019, representatives of the DEM performed an inspection of the Property and determined the following:
 - (a) The Property hosts an active auto salvage operation that conforms to the Federal Standard Industrial Classification Code 5015 in the industry group identified as “Motor Vehicles and Motor Vehicle Parts and Supplies”;
 - (b) Stormwater associated with an industrial activity discharges from the Property to the Hemlock Brook, a **Water of the State**; and
 - (c) The Respondent does not have a Rhode Island Pollutant Discharge Elimination System Permit (250-RICR-150-10-1) for stormwater discharge associated with an industrial activity (“Stormwater Permit”).

C. Violation(s)

Based on the foregoing facts, the Director has reasonable grounds to believe that the Respondent has violated the following statutes and/or regulations:

- (1) ***RI General Laws Section 2-1-21*** – prohibiting activities which may alter **Freshwater Wetlands** without a permit from the DEM.
- (2) **The RIDEM Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Rule 5.01** (recently amended to ***RICR-150-15-1, §1.5A1***), prohibiting activities which may alter **Freshwater Wetlands** without a permit from the DEM.
- (3) ***RI General Laws Section 46-12-5(b)*** – prohibiting the discharge of any pollutant into the waters of the State except pursuant to the terms and conditions of a permit.
- (4) **Rhode Island Code of Regulations titled *Regulations for the Rhode Island Pollutant Discharge Elimination System (RIPDES) (250-RICR-150-10-1) Part 1.32(A)(1)(b)*** – requiring a permit from DEM for stormwater discharge associated with an industrial activity.
- (5) **Rhode Island Code of Regulations titled *Water Quality Regulations (250-RICR-150-05-1)*:**
 - (a) **Part 1.13B** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of an approval issued by the DEM; and
 - (b) **Part 1.15A** – prohibiting the discharge of any pollutant into, or conducting any activity, which will likely cause or contribute to waters of the State.

Based upon the violations alleged above, the following actions are required in order for Respondent to comply with the above-referenced statutes or regulations:

REQUIRED ACTIONS

Wetland Restoration Requirements

1. **Immediately cease from any further alterations of any and all Freshwater Wetlands on the Property.**
2. Prior to commencing restoration, properly install appropriate soil erosion/sediment controls (e.g., staked biodegradable filter socks/fiber logs, staked haybales, and/or silt fence), where necessary, along the limits of the unauthorized alterations, between all disturbed areas and the adjacent undisturbed wetland areas. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the completion of the required wetland restoration, and until such time that all of the surrounding areas are properly stabilized. At the discretion and direction of representatives of this Office, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
3. Remove all unauthorized fill material (including soil material, rocks, boulders, tree waste debris, vehicles and vehicle parts, and possible solid waste debris) from the affected portions of the **Swamp** on the Property. Any removed solid waste material must be disposed of properly at a licensed solid waste management facility and disposal receipts forwarded to this Office. All other (non-solid waste) removed fill material must be deposited in an appropriate upland location, outside of all **Freshwater Wetlands**.
4. Remove the unauthorized fill (including soil material, rocks, boulders, tree waste debris, vehicles and vehicle parts, trailers/containers, machinery, equipment, possible solid waste debris and other miscellaneous debris), including all improvements associated with the unauthorized access driveway/road and fence/gate, from the affected portions of the **50' PW** and **200' RBW** on the Property. Any removed solid waste material must be disposed of properly at a licensed solid waste management facility and disposal receipts forwarded to this Office. All other (non-solid waste) removed fill material must be deposited in an appropriate upland location, outside of all Freshwater Wetlands.
5. Following removal of unauthorized fill materials from the Freshwater Wetlands, all resulting disturbed surface areas within the **Swamp** must be seeded with an appropriate wetland seed mixture. All disturbed surfaces within the **50' PW** must be seeded with an appropriate wildlife conservation seed mixture. All disturbed surface areas must also be stabilized with a thick mat of loose straw mulch, which is free of any contaminants that could promote the spread of invasive plant species.
6. Plant all surface areas within the unauthorized altered portions of the **50' PW** with trees and shrubs, **as directed by a representative of the DEM**, as follows:
 - (a) 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 areas defined above. Tree species must include an equal distribution of at least three (3) of the following selections:

White pine, *Pinus strobus*;
Northern white cedar, *Thuja occidentalis*;
Red maple, *Acer rubrum*;
White ash, *Fraxinus americana*;
White oak, *Quercus alba*;
Northern red oak, *Quercus rubra*;
Gray birch, *Betula populifolia*;
Black birch, *Betula lenta*; and/or
American beech, *Fagus grandifolia*.

- (b) Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, five feet (5') 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:

Mountain laurel, *Kalmia latifolia*;
Giant rhododendron, *Rhododendron maximum* (shaded areas only);
Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*;
Silky dogwood, *Cornus amomum*;
Arrowwood (southern), *Viburnum dentatum*;
American cranberrybush, *Viburnum trilobum*;
Mapleleaf viburnum, *Viburnum acerifolium*;
Highbush blueberry, *Vaccinium corymbosum*;
Sweet pepperbush, *Clethra alnifolia*;
Bayberry, *Myrica pennsylvanica*;
Black chokeberry, *Aronia melanocarpa*; and/or
Witchhazel, *Hamamelis virginiana*.

- (c) In addition, following restoration of the applicable portions of the **50' PW** and **200' RBW** on the Property, balled and burlapped or transplanted evergreen screening trees must be planted in a straight line, eight feet (8') on-center, five feet (5') tall after planting, along the outermost (landward) edge of the applicable portions of the **50' PW** and **200' RBW** (i.e., at the limit of final restoration). Screening tree species must include an equal distribution of at least two (2) of the following selections:

White pine, *Pinus strobus*;
Eastern hemlock (disease-resistant strain), *Tsuga canadensis*;
Northern white cedar, *Tsuga occidentalis*; and/or
White spruce, *Picea glauca*.

7. If any or all of the required plantings fail to survive at least one (1) full year from the time they have been planted, you shall be responsible for replanting and maintaining the same plant species until such time that survival is maintained over one (1) full year.
8. Following the completion of other wetland restoration requirements, all disturbed surface areas must be seeded with an appropriate seed mixture and stabilized with a dense mat of loose straw mulch as described in Restoration Requirement Number 5 above.

9. Upon stabilization of all disturbed areas, all non-biodegradable soil erosion/sedimentation controls must be removed from the Freshwater Wetlands. 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.
10. **All restored Freshwater Wetland areas must be allowed to revert to a natural wild condition.** Aside from those activities considered exempt under Section 1.6(E) of the Rules and Regulations, **no future clearing, mowing, cutting, trimming, or other alterations are authorized in any wetland area on the subject property without first obtaining a valid permit from this Department.**
11. All wetland restoration work must be completed on or before **October 15, 2019**.

RIPDES/Water Pollution Requirements

1. **Within fifteen (15) days of your receipt of this Notice of Intent to Enforce (“NOIE”)**, submit an application to the DEM Office of Water Resources to obtain a RIPDES Permit for Storm Water Discharge Associated with Industrial Activity in accordance with Part 1.32(A)(1)(b) of the RIPDES Regulations.
2. The application required by paragraph 12 shall be subject to DEM review and approval. Upon review, the DEM shall provide written notification to you either granting formal approval or stating the deficiencies therein. **Within fifteen (15) days (unless a longer time is specified) of receiving a notification of deficiencies** in the application, you must submit to the DEM any information necessary to correct the deficiencies.

D. Assessment of Penalty

This Notice constitutes DEM’s initial response to the violation(s) alleged in this NOIE and does not limit or preclude DEM from assessing an administrative penalty pursuant to Rhode Island General Law, Chapter 42-17.6 and the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* for the violations observed to date or for further violations in the event that you fail to comply with this NOIE. Be advised that the maximum penalty associated with noncompliance in these matters can be as high as \$25,000 per violation, per day.

E. Response to this Notice

Within ten (10) days of receipt of this NOIE you are directed to respond to this Office in writing with any facts or evidence that would allow the DEM to modify or revise its conclusion that Respondent is in violation of the statutes or regulations noted above or to notify us of Respondent’s intent to comply with the above required actions.

Please contact Katherine Morgan by telephone at (401) 222-1360, extension 7255, or via e-mail at katherine.morgan@dem.ri.gov, if you have any questions concerning this Notice.

FOR THE DIRECTOR



Bruce S. Ahern
Principal Environmental Scientist
Wetland Compliance Program
Office of Compliance & Inspection
R.I. Department of Environmental Management

April 19, 2019

Date

ATTACHMENT: Site Sketches (2): Site Sketches of Wetland Alterations, Wright's Auto Parts, OCI-FW-18-116, 37 Mill Street (A.P. 12, Lot 71), Foster, RI 02852; Owner: Mill Road Realty Associates, LLC.

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