

**RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124**

AAD NO. 20-002/FWE

Page 2

letter to the Respondent (RIDEM Exhibit 1) resulting from a complaint alleging that he or his agents constructed an unauthorized wall along Georgiaville Pond on the subject property. The letter advised the Respondent of the law and regulations concerning freshwater wetlands and the necessity of obtaining proper authorization/approval from the Rhode Island Department of Environmental Management (“RIDEM”) prior to altering freshwater wetlands. The letter warned that the RIDEM would be investigating this matter to determine if violations occurred which could result in an order to restore the altered wetlands or pay an administrative penalty or both.

On November 15, 2013, the OC&I sent a warning letter (File No. C13-0081) to the Respondent, via certified mail, advising him that the RIDEM received a complaint concerning unauthorized wetlands alterations at his Sidney Street property. (RIDEM Exhibit 2). The OC&I reviewed “recent and historic” aerial photographs of the subject property. The letter further advised the Respondent that the review revealed at least the following activities conducted in freshwater wetlands: “constructing a wall and dock with associated clearing, grading and filling within a pond and perimeter wetland” (Tr. pg. 25)

The letter goes on to further specify what constitutes a violation of the Freshwater Wetlands Act (RIGL 2-1-18 et sq) and, in bold face type, indicates that in order to not violate the Act, a property owner must first obtain the approval of the RIDEM before undertaking any of the specified activities. The correspondence also

**RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124**

AAD NO. 20-002/FWE

Page 3

warns the owner that the Act and the Freshwater Wetlands Regulations require that the freshwater wetlands must be restored to the condition that existed prior to the unauthorized alterations. The letter also encourages the property owner to review the Regulations and states “you may want to retain a qualified wetlands professional to assist you in restoring the altered wetlands or applying for a permit”.

The letter also stated:

In summary, this letter is putting you on notice that unauthorized wetland alterations have been documented on your property. The RIDEM may at anytime issue a formal notice of violation (NOV) ordering restoration of the altered freshwater wetlands. An NOV could include an administrative penalty of up to \$5,000.00 per violation and could be recorded in the land evidence records, which may affect the future sale or refinancing of the property. If you have any questions concerning this letter, please call Anna Cole at 222-1360 extension 7431.

On February 20, 2020, a seventeen page Notice of Violation (“NOV”) was issued by the OC&I to the Respondent for failure to comply with the warning letter of November 15, 2013 and was also based on a new complaint and inspection of the Respondent’s property by the RIDEM which revealed new violations. (RIDEM Exhibit

7) Section B of the Notice of Violation recited the history of this matter:

B. Administrative History

On 15 November 2013, RIDEM issued a Warning Letter to Respondent for one of the violations that is the subject of this Notice of Violation (“NOV”). The letter advised Respondent of the actions required to correct the violation. On 3 December 2013, Respondent spoke with a DEM agent regarding the letter. Respondent agreed to comply with the letter by applying to DEM for a wetlands permit. On 3 April 2019, Respondent spoke with a DEM agent during an inspection of his property in response to a new complaint. Respondent was

**RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124**

AAD NO. 20-002/FWE

Page 4

advised that he failed to comply with the letter and that new violations were present. Respondent stated that he submitted documents to RIDEM and never heard back. DEM's agent stated that there was no record that he applied to DEM for a wetlands permit and advised him to resubmit his documents to DEM. Respondent stated he would do so the following week. As of the date of the NOV, Respondent has failed to apply for a wetlands permit or provide any information to DEM regarding the new violations.

The NOV specified ten (10) separate actions the Respondent needed to take to restore the wetlands prior to October 31, 2020; assessed a \$7,500.00 penalty and detailed his rights to appeal the Notice of Violation to the Administrative Adjudication Division ("AAD") and request a Hearing.

On March 13, 2020, the Respondent timely filed an appeal with the AAD. The parties were unable to resolve this matter, consequently, a Hearing was held on August 3, 2022.

At the Hearing, the Respondent stated that he initially spoke with and met with RIDEM personnel prior to the November 15, 2013 letter being sent in an effort to rectify the violations (Tr. pg. 72) (RIDEM Exhibit 2). He stated that he had photos and a plan to repair the wall and he was assured by the RIDEM personnel at that meeting that he did not need a permit for the repairs to the wall (Tr. pg. 72). At some point after receiving the November 15, 2013 letter, he advised RIDEM personnel that he would comply with the letter and file a wetlands permit application. The Respondent, in his Prehearing Memorandum, (Respondent's Exhibit 5) and during the Hearing argued and presented evidence that he hired a wetlands biologist/company to complete the

**RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124**

AAD NO. 20-002/FWE

Page 5

application for a wetlands permit (Tr., pgs. 74, 126, 130, 136). He stated that he mailed the permit application with a \$100 postal money order and a survey. None of these documents he referred to were placed into evidence at the Hearing except for a letter dated May 4, 2015. (Respondent's Exhibit 3) The letter was from Scott Rabideau, principal of Natural Resources Services, to the Respondent and states the following:

“I am enclosing a completed DEM Request for Preliminary Determination Application package. You need to sign the enclosed application form, where highlighted on page 2, and attach a filing fee check for \$100.00, made payable to RI General Treasurer.

The DEM requires that all three written narratives and three site plans be included with the application form and fee. All required copies are enclosed. I will point out that the survey plan by Calcagni is not stamped. It is preferable to have the site plan stamped by the professional. I will leave that to you to discuss with Mr. Calcagni.

Do not hesitate to contact me if you have any questions”

The Respondent testified that he mailed the packet to RIDEM but did not hear back from the RIDEM for over five years which he did not find surprising. He did not follow up with RIDEM since he believed everything he did was appropriate (Tr. pg. 136) (Respondent's Exhibit 5). He believed the RIDEM misplaced his application. Alternatively, he believed the RIDEM received it but because the survey was incomplete as it lacked a surveyor's stamp, the RIDEM never followed up with him (Tr. pg. 137) (Respondent's Exhibit 5).

THE HEARING

The RIDEM was represented by counsel. The Respondent was pro se. The Parties agreed that the burden of proof in this matter is with the RIDEM to prove all of the allegations in the NOV by a preponderance of the evidence. The OC&I presented four witnesses at the Hearing: Catherine Morgan, Bruce Ahern, David Chopy and John Melucci. At the conclusion of the OC&I's case, the Respondent indicated that everything he had to say was presented in OC&I's case and he had nothing to add (Tr. pg. 137). He did enter five documentary exhibits in the record as Full Exhibits (Tr. pgs. 138-144).

Catherine Morgan

The OC&I's first witness was Catherine Morgan. She has been a Senior Environmental Scientist in the OC&I for the past seven (7) years. She has conducted 700-800 site visits during her tenure, including the Respondent's property. She testified as an expert witness, without objection, regarding freshwater wetlands regulations, and aerial photograph interpretation as a wetlands biologist.

She was assigned this case in 2019 and met with the Respondent on site on April 3, 2019 after reviewing the existing enforcement and historical file as well as photographs of the subject property (Tr. pg. 19).

She confirmed during her inspection that "new material" had been placed within the pond and fifty (50) foot perimeter wetlands as alleged in the complaint she was

**RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124**

AAD NO. 20-002/FWE

Page 7

investigating (Tr. pg. 26). She confirmed this fact with an aerial photograph of what the property looked like on April 20, 2008 (RIDEM Exhibit 8) (Tr. pg. 29). She also viewed aerial photographs from April 5, 2012 (RIDEM Exhibit 9), April 13, 2015 (RIDEM Exhibit 10) and April 22, 2018 (RIDEM Exhibit 11). A chronological review of these photographs by Ms. Morgan revealed all or almost all of the trees on the subject property had been cut down between 2008 and 2012. The 2012 photo also shows a retaining wall along the entire shoreline except for the southern most point and the fifty foot perimeter wetland areas had been converted to lawn (Tr. pg. 35). Thus, she stated that the extension of the wall around the property, beyond where the pre-existing wall was, was a violation of the Freshwater Wetlands Act as the Respondent did not have a permit to extend the wall (Tr. pg. 36). She verified this fact by checking the wetlands permit database from 1971 to 2019 and found that no permit had been issued to the Respondent (Tr. pg. 36).

Ms. Morgan also testified that the removal of the trees in the wetlands area was also a violation of the Freshwater Wetlands Act (Tr. pg. 38). The only exemption is the removal of dead, dying or diseased trees which may have been threatening structures or frequently used areas (Tr. pg. 38-39).

Her site inspection report (RIDEM Exhibit 3) dated April 3, 2019 confirmed the aforementioned violations mentioned in her testimony (Tr. pg. 41-42). In addition, she found riprap within the pond and fill placed in the pond near the boat ramp that was

**RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124**

AAD NO. 20-002/FWE

Page 8

constructed. No permit was issued for these items thus, she stated that the fill and riprap were also violations of the Freshwater Wetlands Act also (Tr. pg. 42).

She testified that she had a discussion with the Respondent at the site and he acknowledged these violations but said he engaged the services of Natural Resource Services to help him obtain a permit. She acknowledged the fact that he provided her documents he said he had previously given to the RIDEM including a narrative written by Scott Rabideau and a site plan (Tr. pg. 46). She encouraged him to resubmit the application materials to the Freshwater Wetlands permitting program (Tr. pg. 45) (RIDEM Exhibits 4, 5 and 6).

Ms. Morgan then conferred with her supervisor, Mr. Bruce Ahern, of the wetlands program and Mr. David Chopy who is the supervisor of the OC&I. They all concluded that the activities undertaken by the Respondent were wetlands violations (Tr. pg. 50) that were eventually memorialized in the Notice of Violation to the Respondent (RIDEM Exhibit 7).

On cross examination of Ms. Morgan, the Respondent asked if all investigations were conducted after a complaint was filed and Ms. Morgan responded in the affirmative (Tr. pg. 63). She acknowledged that there may be other violations on adjacent or nearby properties to the Respondent's property, but explained that the OC&I is "complaint driven" and therefore does not have personal knowledge of other violations unless a complaint has been filed with the RIDEM (Tr. pg. 62-64).

Page 9

The Respondent asked Ms. Morgan about any easements on his property and the easement holder's responsibility to maintain the easements but offered no documents or evidence about them. Ms. Morgan had no knowledge of easements on the Respondent's property (Tr. pg. 66). The Respondent also asked Ms. Morgan if she was aware that he spoke with two employees at the RIDEM who allegedly told him that he was making repairs to the property and did not need a permit (Tr. pg. 72). Ms. Morgan had no knowledge of that discussion (Tr. pg. 72).

Bruce Ahern

The OC&I then presented Mr. Bruce Ahern as its next witness. He has been employed at the RIDEM for twenty-four (24) years and is currently the Principal Environmental Scientist at the OC&I. He supervises three or four scientists who prepare reports after investigations and then report back to him. He will often prepare informal notices, notices of intent to enforce for parties alleged to be responsible for unauthorized alterations of the Freshwater Wetlands Act and the RIDEM regulations. He has also conducted over a thousand site inspections. He was qualified as an expert, without objection, regarding wetlands biology, wetland delineation and the interpretation of the Freshwater Wetlands Act and the RIDEM Freshwater Regulations (Tr. pg. 82).

He reviewed the entire file pertaining to the Respondent's property and, in coordination with office staff, including David Chopy, the office chief. Based on the

**RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124**

AAD NO. 20-002/FWE

Page 10

history of the case and the character of the property, he said the staff determined that they should issue a formal enforcement action on this case as it was his conclusion that wetlands violations existed on the Respondent's property (Tr. pg. 86-87). He coordinated with other staff in helping to prepare the restoration requirements in the NOV (Tr. pg. 87). The restoration requirements were developed to bring the property back to the condition that it was in prior to the alterations (Tr. pg. 92).

On cross examination, the Respondent attempted to demonstrate that many owners of waterfront property are not aware of the freshwater wetlands regulations. Mr. Ahern stated that the rules and regulations are in place and apply to everyone who purchases waterfront property (Tr. pg. 95).

The Respondent also inquired of Mr. Ahern about a site meeting he had with him along with the Respondent's neighbor who allegedly has an easement for the boat launch. Mr. Ahern allegedly told the neighbor he could not use it as a boat launch according to the Respondent. Mr. Ahern responded "I can't say what I said during the meeting, but I may have said that" (Tr. pg. 97). Mr. Ahern also stated that "regardless of whether there is an easement there, if there are new alterations within a freshwater wetland not considered existing, meaning they were there prior to the Act, or they had a permit for the work, then it represents a violation" (Tr. pg. 98). The Respondent pursued the notion that the boat launch area was a drainage ditch for the town of Smithfield which gathered sediment from water runoff and that his neighbor had an

**RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124**

AAD NO. 20-002/FWE

Page 11

easement to launch his boat. The Respondent offered no additional evidence on these points (Tr. pg. 98-100).

The Respondent challenged Mr. Ahern's conclusions about the presence of a wall on the property which was a violation. Mr. Ahern's conclusions were based exclusively on his observations of photographs in the file and not a site visit (Tr. pg. 103). The Respondent tried to demonstrate that the trees and foliage in the photos block the view of the property and a site visit was necessary (Tr. pg. 104).

David Chopy

The next witness presented by the RIDEM was Mr. David Chopy who is the Administrator of the Office of Compliance and Inspection ("OC&I"). He has been with the RIDEM for thirty-seven (37) years. As the administrator, he supervises twenty-three (23) staff members comprised of scientists, engineers, administrators and support staff that operate eight (8) regulatory programs, including wetlands.

The wetlands staff is responsible for taking complaints and investigating them. The staff, if necessary, takes enforcement action and gets wetlands restored back to the condition they were before alteration or having people get permits to get legal approval for what they did (Tr. pg. 111). The staff does not do compliance monitoring to look for violations. They may see something while out in the field, call in a complaint on the site but does not go out and randomly look for violations according to Mr. Chopy (Tr. pg. 111).

**RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124**

AAD NO. 20-002/FWE

Page 12

He drafts Notices of Violations as part of his duties. He has drafted hundreds of them during his time as administrator (Tr. pg. 112). He also assesses and calculates administrative penalties as administrator (Tr. pg. 112). There are rules and regulations for the calculation of penalties that became effective in 2001 (RIDEM Exhibit 13). He drafts the NOV's with input from the scientists who investigated the case and their supervisors who provide input (Tr. pg. 116).

He crafts the facts and the penalty and sends it to Mr. Ahern for review. If accurate, he then sends it to the RIDEM legal counsel for review and approval (Tr. pg. 116).

He qualified and testified as an expert in the application of the rules and regulations for administrative penalties without objection (Tr. pg. 115). In this case, the total administrative penalty he calculated was \$7,500.00. It was based on information in the file, Ms. Morgan's report and Mr. Ahern's recommendation (Tr. pg. 117) (RIDEM Exhibit 13).

Mr. Chopy has calculated hundreds of administrative penalties for NOV's per the rules and regulations that have been in effect since 2001 (Tr. pg. 112) (RIDEM Exhibit 13).

Mr. Chopy testified that he is familiar with the administrative penalties in the NOV issued to the Respondent (RIDEM Exhibit 9). He spoke in detail about all three

**RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124**

AAD NO. 20-002/FWE

Page 13

violations in this case and the manner in which he calculated the penalty in accordance with the rules and regulations (RIDEM Exhibit 13).

On cross examination by the Respondent, Mr. Chopy acknowledged speaking with the Respondent about his property sometime in 2013. He also said that the Respondent told him he spoke with a few staff members at the RIDEM about his property. He recalls that he may have advised the Respondent to apply for a permit after the fact and that a list of companies may have been given to Respondent but said he would never have advised the Respondent to hire a particular wetlands biologist (Tr. pg. 127).

On re-direct examination, Mr. Chopy said he is aware that the Respondent made representations that he sent in a permit application in or around 2015 but has no personal knowledge if it was received by the department (Tr. pg 129-130).

John Melucci

The OC&I then conducted direct examination of the Respondent. He acknowledged purchasing the property in 2012 and acknowledged the RIDEM Exhibit 8 which he said was a fair representation of what the property looked like when he purchased it including the trees that were on the property (Tr. pg. 132).

He was asked what happened to the trees since 2012. The Respondent referenced Respondent's Exhibit 2 (the arborist's letter). The Respondent testified that the arborist "decided that there wasn't one left to save...he told me every tree was

**RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124**

AAD NO. 20-002/FWE

Page 14

infested” (Tr. pg. 132). He then had a landscaper remove all the trees (Tr. pg. 133). He acknowledged the RIDEM’s Exhibit 9, which is a picture of the property after all the trees were removed without obtaining a permit (Tr. pg. 133).

He further stated that he went to meet with the RIDEM officials after removing the trees (Tr. pg. 134). He also acknowledged that he did not get a permit before constructing the retaining wall; that he was aware that easement owner had riprap placed around the boat launch area and that everything else done on his property was done at his direction (Tr. pg. 135).

Lastly he stated that he spoke with Mr. Chopy sometime in 2013. He then hired Natural Resource Services and a surveyor to prepare an after the fact permit application package for the wall and the dock (Tr. pg. 136)(Respondent Exhibit 5). He claims that he submitted these documents to the RIDEM but never heard back from anyone at the RIDEM and said “my mistake for not following up” (Tr. pg. 136).

ISSUES TO BE RESOLVED

The questions to be resolved in this matter are:

1. Whether Respondent violated Rule 5.01 of the DEM Rules and Regulations Governing the Enforcement of the Freshwater Wetlands Act, prohibiting activities which may alter freshwater wetlands without a permit from DEM.
2. Whether Respondent violated R.I. Gen Laws 2-1-21, prohibiting activities which may alter freshwater wetlands without a permit from DEM.

**RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124**

AAD NO. 20-002/FWE

Page 15

3. Whether the issuance of the Notice of Violation, Order and Administrative Penalty is proper and should be affirmed.
4. Whether the assessment of an administrative penalty in the amount of \$7,500 is supported by the facts.

ANALYSIS

The Respondent was first advised by letter on August 23, 2013 about potential freshwater wetlands violations on his property. That letter, most importantly, advised him of the necessity of obtaining proper authorization/approval from the RIDEM prior to altering freshwater wetlands. It also informed him that the RIDEM would be investigating this matter to determine if violations occurred which could result in penalties and an order to restore the wetlands or both. He was then warned in a subsequent letter dated November 15, 2013 from the RIDEM that an investigation revealed specific wetlands violations and that a permit from the RIDEM was needed to restore the unauthorized alterations to the property back to its original condition. Finally, a seventeen (17) page Notice of Violation was issued to the Respondent on February 20, 2020 regarding the subject property.

Ms. Catherine Morgan's testimony regarding her investigation of this matter was credible and comprehensive. It is clear that her correspondence and discussions with the Respondent conveyed the gravity of the violations, the remedial work necessary and

Page 16

the requirement of obtaining a permit to conduct the restorative work, even though it was “after the fact”.

The same is true of Mr. Bruce Ahern’s testimony, especially Mr. Ahern’s testimony about his discussions with the Respondent about the necessity of obtaining a permit from RIDEM to take the necessary corrective action, regardless of a potential easement on the property.

Similarly, Mr. David Chopy testified about his discussions with the Respondent about the documentation he needed to submit in order to obtain a permit after the fact. He also discussed with the Respondent the possibility of using a wetlands professional to assist him in preparing and submitting an application for a permit and/or restoring the wetlands.

The Respondent testified that he met with certain RIDEM staff members prior to starting any work (Tr. pg. 72). Those individuals allegedly advised him he did not need a permit because he was making repairs (Tr. pg. 72). None of the witnesses for the RIDEM confirmed this meeting and no additional evidence was presented concerning this meeting.

Nonetheless, the Respondent was advised verbally and in writing on numerous occasions about the requirement to obtain a permit for work he did or ordered done by others on his property over a six year period of time. While it is concerning that a re-inspection did not occur for almost six years, the Respondent, by his own admission,

**RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124**

AAD NO. 20-002/FWE

Page 17

subsequently acknowledged that he was required to get a permit and alleged that he filed for one but failed to verify that his permit application was or was not received by the RIDEM during this time.

Further, Mr. Chopy acknowledged, as did Ms. Morgan and Mr. Ahern, that the Respondent told them he was submitting an application for a permit, hired a wetlands biologist and a surveyor to assist him after he became aware of the rules and regulations. Ms. Morgan acknowledged that the Respondent gave her documents during a site inspection that he allegedly submitted to the RIDEM to obtain a permit. She informed him that the RIDEM database did not show that a permit for the subject property was ever issued. She encouraged him to resubmit the permit application.

The net result is that the Respondent alleges that he made attempts to obtain a permit after the fact with the professional assistance of a wetlands biologist and surveyor. He alleged that he submitted the documents along with a postal money order for the \$100 application fee. (Respondent's Exhibit 3)

The Respondent's claims that he had a permit application prepared are somewhat credible based on his testimony and that of some of the RIDEM witnesses combined with the documents he admitted into evidence. His subsequent failure to secure a permit while additional unauthorized work was being done at his peril resulted in the NOV being issued. The numerous written and verbal communications from the

RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124

AAD NO. 20-002/FWE

Page 18

RIDEM and its staff instructing him about the necessity of obtaining a permit were clear and unambiguous.

With respect to the penalty calculation, I find Mr. Chopy's analysis and methods used were credible and within the parameters of the regulations governing the calculation and I see no reason to disturb his conclusions. The Respondent did not challenge or disprove the calculations. He was well aware that the property needed to be restored and his failure to do so could result in a violation notice, penalties and/or both.

CONCLUSION

The RIDEM has met its burden of proof by a preponderance of the evidence that the Respondent has committed the violations of the Freshwater Wetlands Act as alleged in the NOV. The administrative penalty assessed is fair and was calculated in accordance with the penalty rules without objection or proof by the Respondent that the penalty was not calculated properly.

FINDINGS OF FACT

Based on the stipulations of the Parties, the documentary and testimonial evidence, I make the following findings of fact:

1. The property is located at 27 Sidney Street, Assessors Plat 21, Lot 18 in the Town of Smithfield, Rhode Island.

**RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124**

AAD NO. 20-002/FWE

Page 19

2. John Melucci is the owner of the Property.
3. Respondent purchased the Property on or about March 6, 2012.
4. On or about August 21, 2013 the Office of Compliance and Inspection sent a letter to the Respondent regarding a complaint alleging that he or his agents constructed an unauthorized wall along Georgiaville Pond on the subject property.
5. On or about November 15, 2013, the OC&I sent a warning letter (File No. C13-0081) to the Respondent, via certified mail, advising him that the RIDEM received a complaint concerning unauthorized wetlands alterations to the subject property.
6. On or about February 20, 2020, a seventeen page Notice of Violation was issued by the OC&I to the Respondent for failure to comply with the warning letter of November 15, 2013 and was also based on a new complaint and inspection of the Respondent's property by the RIDEM which revealed new violations.
7. In response to the complaint, the RIDEM reviewed aerial photographs, which revealed the following:
 - (a) A wall and dock were constructed within the Pond; and
 - (b) Clearing, grading and filling occurred within the 50-foot perimeter wetland associated with the Pond (the "Perimeter Wetland")
8. On 28 March 2019, the RIDEM received a complaint regarding the placement of soil and gravel into the Pond from the Property.
9. On 3 April 2019, the RIDEM inspected the Property in response to the complaint. The inspection and subsequent review of aerial photographs from 2013 to February 20, 2020 revealed the following:
 - (a) A boat ramp was constructed within the Pond; and
 - (b) Creation and maintenance of a lawn and constructing a fenced in area off the southern building within the Perimeter Wetland.

10. The activities described above resulted in the alteration of approximately 165 linear feet (wall length) and 400 square feet (dock and boat ramp) to the Pond.
11. The activities described above resulted in the alteration of approximately 6,500 square feet of the Perimeter Wetland.
12. The activities described above are not exempt in accordance with Part 1.6 of the Rhode Island Code of Regulations titled *Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act (250-RICR-150-15-1)*(the “Wetland Rules”).
13. Respondent did not receive a permit from RIDEM to alter the freshwater wetlands as described above.
14. The Respondent timely filed an appeal of the Notice of Violation to the Administrative Adjudication Division on March 13, 2020.
15. The Respondent received correspondence from Natural Resource Services dated May 4, 2015 which purportedly enclosed a completed RIDEM Request for Preliminary Determination application package and instructions to file same.
16. The Respondent alleged but did not provide additional evidence that he properly filed a completed RIDEM Request for Preliminary Determination application package regarding the subject property.
17. Ms. Catherine Morgan, who testified for the OC&I, stated that she searched the RIDEM database from 2001 to 2019 and did not find an application issued to the Respondent for the subject property.
18. The Respondent admitted that he hired an arborist who declared that all of the trees needed to be removed and the Respondent hired a landscaper to remove all of the trees on the subject property but did not obtain a permit to do that from the RIDEM.
19. The Respondent admitted on cross examination that he extended the retaining wall on the subject property without obtaining a permit from the RIDEM.
20. The Respondent stated that the “easement owner” placed a twenty foot strip of riprap in the boat launch area but offered no proof of this.

21. The administrative penalty calculations for each violation and which total \$7,500.00 were not objected to or rebutted by the Respondent nor were the calculations proved to be incorrect by the Respondent.

CONCLUSIONS OF LAW

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Respondent.
2. The RIDEM has jurisdiction over the subject matter wetlands located on the Respondent's property.
3. The Respondent filed a timely request for a hearing in accordance with R.I. Gen. Laws § 42-17.1-2.
4. The RIDEM had reasonable grounds to believe that the Respondent and/or his agents violated the Freshwater Wetlands Act which warranted the issuance of the NOV to the Respondent.
5. The Respondent violated Rule 5.01 of the RIDEM Rules and Regulations Governing the Enforcement of the Freshwater Wetlands Act, prohibiting activities which may alter freshwater wetlands without a permit from RIDEM.
6. The Respondent violated R.I. Gen. Laws 2-1-21, prohibiting activities which may alter freshwater wetlands without a permit from RIDEM.
7. The issuance of the Notice of Violation, Order and Administrative penalty was proper and is hereby **AFFIRMED.**
8. The assessment of an administrative penalty in the amount of \$7,500.00 is appropriate, supported by the facts and is hereby **AFFIRMED.**

RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124

AAD NO. 20-002/FWE

Page 22

ORDER

Wherefore, it is hereby ORDERED that:

1. The Appeal filed by the Respondent, John Melucci, is hereby **DENIED** and **DISMISSED**.
2. The terms of the NOV issued on February 20, 2020 against the Respondent, is hereby **SUSTAINED** in its entirety.

Entered as an Administrative Order this 29TH day of September 2022.



David M. Spinella
Chief Hearing Officer
Administrative Adjudication Division
235 Promenade Street, 3rd Floor, Rm 350
Providence, RI 02908
(401) 222-4700 Ext 2774600

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS 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 FINAL DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A COMPLAINT 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.

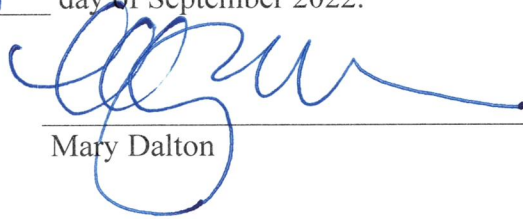
RE: JOHN MELUCCI
NOTICE OF VIOLATION OCI-FW-13-124

AAD NO. 20-002/FWE

Page 23

CERTIFICATION

I hereby certify that I caused a true copy of the within Decision and Order to be forwarded by first-class mail to: John Melucci, 27 Sidney Street, Smithfield RI 02919; via interoffice mail to Christina Hoefsmit, Esq., RIDEM Office of Legal Services, and David Chopy, Administrator, Office of Compliance & Inspection, 235 Promenade Street, Providence, RI 02908 on this 29 day of September 2022.



Mary Dalton