

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

**IN RE: Walter F. Barnes, Jr.
Barbara Barnes**

FILE NO.: FW C05-0161

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) 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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

The violations that are the subject of this notice of violation were originally conducted by Walter F. Barnes III, who died in 2010. On August 4, 2010 the DEM received correspondence from the attorney representing Mr. Barnes indicating that the violations would be brought to conclusion without the necessity of the issuance of a notice of violation. In 2011, the DEM met several times with Steven Barnes (brother of Walter F. Barnes III) to try to resolve the violations. The property was later acquired through estate proceedings by the parents of Walter F. Barnes III. On September 19, 2012 the DEM sent a letter to the attorney representing the Estate of Walter F. Barnes III, advising him that the violations remain unresolved and had to be completed by the fall of 2012 to avoid issuance of a notice of violation. The DEM did not receive a response to the letter.

C. Facts

- (1) The property is located approximately 700 feet west of Tower Hill Road (Route 1) adjacent to number 2845 Tower Hill Road, approximately 850 feet southwest of the intersection of Tower Hill Road and Vineyard Road, Assessor's Plat 5, Lot 20 in the town of North Kingstown, Rhode island (the “Property”).
- (2) The Respondents own the Property. The Respondents acquired the Property on January 20, 2011. Walter F. Barnes III formerly owned the Property. Mr. Barnes died on February 6, 2010 and his estate was closed on February 16, 2011.

- (3) Inspection of the Property by the DEM's Office of Compliance and Inspection ("OC&I") on May 2, 2005, March 27, 2009, and May 13, 2009 revealed the following unauthorized alterations of freshwater wetlands:
- (a) Filling (in the form of at least soil material) within Swamp, portions of which are also Riverbank Wetland. This activity has resulted in the unauthorized alteration of approximately 18,600 square feet of wetland.
 - (b) Filling (in the form of at least soil material) within Perimeter Wetland. This activity has resulted in the unauthorized alteration of approximately 9,000 square feet of wetland.
 - (c) Filling (in the form of at least soil material) and installing a culvert within an Intermittent Stream. This activity has resulted in the unauthorized alteration of approximately 20 linear feet of wetland.
 - (d) Filling (in the form of at least soil material) and installing a culvert within a second Intermittent Stream. This activity has resulted in the unauthorized alteration of approximately 20 linear feet of wetland.
 - (e) Filling (in the form of at least soil material) and installing a culvert within a River. This activity has resulted in the unauthorized alteration of approximately 20 linear feet of wetland.
 - (f) Filling (in the form of at least soil material) and installing a culvert within a second River. This activity has resulted in the unauthorized alteration of approximately 20 linear feet of wetland.
 - (g) Filling within five Riverbank Wetlands, portions of which are also Perimeter Wetland. This activity has resulted in the unauthorized alteration of approximately 8,000 feet of wetland.
- (4) Neither the former owner, nor the Respondents, received approval from the DEM to alter the freshwater wetlands on the Property in the areas specified above (the "Altered Wetlands").
- (5) Since being apprised of the unauthorized alterations, the Respondents have failed to restore the Altered Wetlands.

D. Violation

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

- (1) **R.I. Gen. Laws Section 2-1-21** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (2) **DEM's Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Rule 5.01** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) Cease and desist **IMMEDIATELY** from any further alteration of the above described freshwater wetlands, and
- (2) Restore all freshwater wetlands in accordance with the restoration requirements set forth below.

RESTORATION REQUIREMENTS

- (a) Prior to the commencement of restoration install a continuous uninterrupted line of staked haybales or silt fence between all existing disturbed surfaces/areas to be restored and the adjacent undisturbed freshwater wetlands. The 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.
- (b) Remove all unauthorized fill material (in the form soil material and stone) from all portions of the Swamp, Perimeter Wetland, and Riverbank Wetlands on the Property. All fill material which is removed must be deposited outside of any and all wetlands.
- (c) Remove all culverts and fill material from each Intermittent Stream and River on the Property. Following removal of the fill and culverts, each watercourse must be returned to a natural channel that restores the width, depth, substrate, and configuration of the undisturbed channel up and downstream of the altered areas.
- (d) All disturbed surfaces within the Perimeter Wetlands and Riverbank Wetlands must be covered with plantable soil/loam (if necessary), seeded with a wildlife conservation grass seed mixture, and stabilized with a mat

of loose hay mulch. Steeply sloping areas shall be covered with excelsior matting or jute mesh.

- (e) All disturbed surfaces within the Swamp and watercourses must be seeded with a wetland conservation grass seed mixture and stabilized with a mat of loose hay mulch.
 - (f) All restored freshwater wetland areas must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations are authorized in any wetland area on the subject property without first obtaining a permit from the DEM.
 - (g) Upon stabilization of all disturbed areas all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) shall be removed from the freshwater wetland. Staked haybales, spread hay mulch, and other naturally-based/bio-degradable erosion control measures may remain in place to decompose naturally. Prior to the removal of the controls all accumulated sediment shall be removed to a suitable upland area and all disturbed surfaces shall be stabilized as described above.
 - (h) The above restoration work shall be completed prior to **May 15, 2013**.
- (3) Contact Mr. Bruce Ahern at DEM (401) 222-1360 ext. 7703 prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No work shall commence until such time that you have met in the field with the DEM.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
 - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:
- Richard M. Bianculli Jr., Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
 - (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
 - (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
 - (6) An original signed copy of this NOV is being forwarded to the town of North Kingstown wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 2-1-24, as amended.
 - (7) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Richard Bianculli, Esq. at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Mr. Bruce Ahern or Mr. Harold Ellis of the DEM Office of Compliance and Inspection at (401) 222-1360 exts. 7703 and 7401, respectively.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Walter F. Barnes, Jr.

**278 Natick Avenue
Warwick, RI 02886**

**Barbara Barnes
278 Natick Avenue
Warwick, RI 02886**

by Certified Mail.
