

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

**IN RE: Glenn Teolis
Kimberly Teolis**

FILE NO.: C06-0252

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

On April 20, 2007, DEM issued an informal written notice to the Respondents for the violations. The notice required specific actions to correct the violations. The DEM has had numerous discussions and field meetings with the Respondents regarding the violations; however, to date the Respondents have failed to comply with the notice.

C. Facts

- (1) The property is located at 55 Falcon Lane, Assessor's Plat 35, Lot 325, in the city of Cranston, Rhode Island (the “Property”).
- (2) The Respondents own the Property.
- (3) DEM inspected the Property on December 18, 2006, January 24, 2007, May 15, 2007, March 13, 2008, April 6, 2011, June 7, 2011, October 28, 2011, February 12, 2012 and May 9, 2012. The inspections revealed the following:
 - (a) Filling (in the form of soil material), clearing, grading, and creating soil disturbance within Swamp. These activities have resulted in the unauthorized alteration of approximately 2,170 square feet of freshwater wetland; and
 - (b) Filling (in the form of soil material), clearing, grading, and creating soil disturbance within Perimeter Wetland. These activities have resulted in the unauthorized alteration of approximately 7,015 square feet of freshwater wetland.
- (4) The Respondents did not receive approval from DEM to alter the freshwater wetlands on the Property in the areas specified above.

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 (effective April 23, 1998), Rule 7.01** – 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 those portions of the wetlands that have been altered without authorization and the undisturbed Swamp. 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 DEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
- (b) Remove all unauthorized fill material from the altered Swamp, including all sod/established lawn, underlying deposited soil material, landscaping improvements, and residential amenities (i.e., swing-sets, landscaped islands, etc.). Fill material must be removed down to the original wetland grade (i.e., to the elevation of the original hydric organic surface soils), seeded with a proper wetland seed mixture, and covered with spread hay mulch (to provide stabilization). All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.

- (c) Re-grade the slope resulting from fill removal (extending from the edge of the Swamp landward) to create a 3:1 or shallower slope. An adequate plantable soil (loam) must be applied to the finished slope (as needed), and the affected areas stabilized by seeding with a proper wildlife conservation seed mixture and covering all disturbed surface areas with a dense mat of loose hay mulch.
- (d) Remove all sod/established lawn, landscaping improvements, and residential amenities (i.e., swing-sets, landscaped islands, etc.) from the Perimeter Wetland, landward from the edge of the Swamp to the limit of disturbance line shown on plans approved under permit number 03-0395 that was issued by DEM to the prior owners of the Property on September 15, 2003 (the "LOD"). If adequate plantable soil is not remaining following sod/lawn removal, then loam must be applied as needed and all disturbed surfaces must be seeded with a wildlife conservation seed mixture, and covered with spread hay mulch (to provide stabilization). All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
- (e) Plant all surface areas within the Perimeter Wetland with trees and shrubs, as follows:

- i) Balled and burlapped or transplanted evergreen tree species must be planted in a straight line, eight (8) feet on center, five (5) feet tall after planting along the LOD. Tree species must be selected from the following selections:

Northern white cedar, *Thuja occidentalis*
White pine, *Pinus strobus*
Red cedar, *Juniperus virginiana*

- ii) Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, ten (10) feet on center, four (4) feet tall after planting, throughout those portions of the Perimeter Wetland landward from the edge of the Swamp to the LOD. 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*
Silver maple, *Acer saccharinum*
Black gum, *Nyssa sylvatica*
Box elder (Ash-leaf maple), *Acer negundo*
Northern red oak, *Quercus rubra*
White oak, *Quercus alba*

American mountain ash, *Sorbus americana*
Sycamore, *Platanus occidentalis*

- iii) Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, five (5) feet on center, three (3) feet tall after planting, throughout those portions of the Perimeter Wetland landward from the edge of the Swamp to the LOD. Shrub species must include an equal distribution of at least four (4) of the following selections:

Mountain laurel, *Kalmia latifolia*
Gray (stiff, red-panicle) dogwood, *Cornus foemina racemosa*
Arrowwood, *Viburnum dentatum*
Wild raisin, *Viburnum cassinoides*
Mapleleaf viburnum, *Viburnum acerifolium*
Winterberry (closer to Swamp edges), *Ilex verticillata*
Inkberry, *Ilex glabra*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Swamp azalea (closer to Swamp edges), *Rhododendron viscosum*
Purple osier (basket) willow, *Salix purpurea*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

- (f) All disturbed surfaces within the Perimeter Wetland 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.
- (g) The Perimeter Wetland and Swamp must be allowed to revert to a natural condition and not be subject to clearing operations. No future clearing, mowing, cutting, trimming, or any other alterations are authorized in any wetland area on the Property without first obtaining a permit from DEM.
- (h) If any or all of the required plantings fail to survive at least two (2) full years from the time the plantings have been verified by DEM, the same plant species shall be replanted and maintained until such time that survival occurs over two (2) full years.
- (i) Upon stabilization of all disturbed areas, erosion and sedimentation controls must be removed from the freshwater wetland. 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.
- (j) The above restoration work shall be completed prior to **May 31, 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 DEM.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

Four Thousand Five Hundred Dollars (\$4,500.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the DEM within twenty (20) days of your receipt of this NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the “General Treasury - Water & Air Protection Program Account” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondents in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

G. 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 F 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 city of Cranston 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 M. Bianculli at the DEM Office of Legal Services at (401) 222-6607 ext 2023. 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 G 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:

Glenn Teolis
55 Falcon Lane
Cranston, RI 02921

**Kimberly Teolis
55 Falcon Lane
Cranston, RI 02921**

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C06-0252

Respondents: Glenn Teolis and Kimberly Teolis

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1), (2) and (3) – Alteration of Swamp	Type I (\$ <u>5,000</u> Max. Penalty)*	Moderate	\$2,000	1 violation	\$2,000.00
D (1), (2) and (3) – Alteration of Perimeter Wetland	Type I (\$ <u>5,000</u> Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500.00
<i>SUB-TOTAL</i>					\$4,500.00

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATION= \$4,500.00

PENALTY MATRIX WORKSHEET

CITATION: Alteration of Swamp
 VIOLATION NO.: D (1), (2), and (3)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by filling (in the form of soil material and landscaping amenities), clearing, grading, and creating soil disturbance within Swamp. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.</p> <p>(B) Environmental conditions: The Swamp was a natural forested area prior to the unauthorized alterations.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Total duration unknown - at least 4½ years. Unauthorized alterations were first documented by DEM on December 18, 2006.</p> <p>(F) Areal extent of the violation: The aerial extent of the violation is approximately 2,170 ft².</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents did not take reasonable steps to prevent the noncompliance. A freshwater wetland permit was recorded in the land evidence records prior to the purchase of the property by the Respondents. Despite the requirements in the permit the Respondents altered freshwater wetlands on the property. The Respondents also failed to take reasonable steps to mitigate the violation. DEM issued a notice of intent to enforce to the Respondents on 4/20/07 that required restoration of the altered wetlands. To date, the Respondents have failed to restore the wetlands.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondents had complete control over the project and had an obligation to protect the wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500 \$2,000	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250

PENALTY MATRIX WORKSHEET

CITATION: Alteration of Perimeter Wetland

VIOLATION NO.: D (1), (2), and (3)

TYPE		
<p style="text-align: center;"><u>X</u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p><small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small></p>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents altered freshwater wetlands by filling (in the form of at least soil material and landscaping amenities), clearing, grading, and creating soil disturbance within Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.</p> <p>(B) Environmental conditions: The Perimeter Wetland was a natural forested area prior to the unauthorized alterations.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Total duration unknown - at least 4½ years. Unauthorized alterations were first documented by DEM on December 18, 2006.</p> <p>(F) Areal extent of the violation: The aerial extent of the violation is approximately 7,015 ft².</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents did not take reasonable steps to prevent the noncompliance. A freshwater wetland permit was recorded in the land evidence records prior to the purchase of the property by the Respondents. Despite the requirements in the permit the Respondents altered freshwater wetlands on the property. The Respondents also failed to take reasonable steps to mitigate the violation. DEM issued a notice of intent to enforce to the Respondents on 4/20/07 that required restoration of the altered wetlands. To date, the Respondents have failed to restore the wetlands.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondents had complete control over the project and had an obligation to protect the wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 5,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$2,500 to \$5,000	\$1,250 to \$2,500	\$500 to \$1,250
	MODERATE	\$1,250 to \$2,500 \$2,500	\$500 to \$1,250	\$250 to \$500
	MINOR	\$500 to \$1,250	\$250 to \$500	\$100 to \$250