

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

**IN RE: Raymond F. Acciardo
Marie E. Acciardo**

**FILE NO.: FW C12-0024
X-Ref NOs.: C-2201 and
C04-0425**

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

DEM issued a notice of violation to Raymond Acciardo on April 8, 1987 for altering wetlands on many of the lots that are the subject of this notice. Mr. Acciardo did not file an appeal to contest the 1987 notice. Efforts to resolve the notice of violation, including numerous meetings and mediation sessions held in 1997, 2002, and 2004, were unsuccessful. Inspections by DEM performed from 2002 through 2011 revealed continued alterations to these wetlands and alteration of previously undisturbed wetlands.

C. Facts

- (1) The property is located approximately 250 feet north of Hartford Avenue, approximately 300 feet north/northeast of (and opposite) the intersection of Hartford Avenue and Dix Avenue and approximately 150 feet west/northwest of the intersection of Hartford Avenue and City View Parkway, Assessor's Plat 21, Lots 493, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514 and 515, in the town of Johnston, Rhode Island (the "Property").
- (2) The Respondents own Lots 498, 500, 502, 504, 506, 508, 510, 512, 514, and 515. Raymond Acciardo owns Lots 493, 494, and 496.
- (3) DEM inspected the Property on October 10, 2002, December 13, 2002, September 16, 2004, May 18, 2005, April 29, 2008, December 5, 2008 and May 20, 2011. The inspections revealed the following unauthorized alterations of freshwater wetlands:
 - (a) Clearing, filling (in the form of soil material, boulders, rocks and stones, construction materials, and stored equipment/vehicles), grading, and creating soil disturbance within Swamp. These activities have resulted in

the unauthorized alteration of approximately 77,000 square feet (1.77± acres) of freshwater wetland.

- (b) Clearing, filling (in the form of soil material, boulders, rocks and stones, construction materials, and stored equipment/vehicles), grading, and creating soil disturbance within Perimeter Wetland. These activities have resulted in the unauthorized alteration of approximately 25,500 square feet (0.59± acres) of freshwater wetland.
 - (c) Clearing, filling (in the form of soil material, boulders, rocks and stones, slash, and other debris material), excavating, grading, and creating soil disturbance in a second location within the Swamp. These activities have resulted in the unauthorized alteration of approximately 1,500 square feet of freshwater wetland.
 - (d) Clearing, filling (in the form of soil material, boulders, rocks and stones, slash, and other debris material), excavating, grading, and creating soil disturbance within Riverbank Wetland and Perimeter Wetland associated with the second location within the Swamp. These activities have resulted in the unauthorized alteration of approximately 22,550 square feet (0.52± acres) of freshwater wetland.
- (4) The Respondents did not receive approval from the 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, 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 areas to be restored and the adjacent undisturbed freshwater wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced) during and following the completion of the required wetland restoration activities, and until such time that all 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 all wetlands.
- (b) Remove all unauthorized fill material from the Swamp, including but not limited to, soil, construction materials, rocks, boulders, stored equipment and vehicles, and other non-native materials. All unauthorized fill material must be removed down to an elevation that matches the adjacent undisturbed Swamp grades, to a point where original native hydric (organic) soils are encountered. All fill material that is removed must be deposited off-site, in an appropriate upland location, outside of all wetlands.
- (c) If, following fill removal, an adequate hydric (organic) soil substrate is not present, excavate an additional six-inches of soil and apply six-inches of a high-organic plantable soil to re-establish the proper elevations and hydrologic regime, matching those of the adjacent undisturbed Swamp. While performing the final grading work within the Swamp, small, slightly elevated mounded areas may be created (at appropriate spacing), as needed, using high-organic plantable soil, on or within which tree and shrub plantings may be installed. All disturbed surface areas within the restored Swamp must be seeded with a wetland seed mix, and then covered with a mat of spread hay mulch to provide immediate stabilization.
- (d) Remove all fill within the Perimeter Wetland situated to the west of the restored Swamp (on Lots 493 through 508) to create a gradual, gentle and stable slope (at a 5:1 or shallower grade), extending from the limits of the restored Swamp to the outer (landward) edge of the Perimeter Wetland. Remove all fill within the Perimeter Wetland and Riverbank Wetland situated to the east and southeast of the Swamp and east of the Intermittent Stream (on Lots 510 through 514) to create a stable 3:1 (maximum) slope extending landward from the edge of the Swamp. All disturbed surface areas within the restored Perimeter Wetlands and Riverbank Wetland must be seeded with a wildlife conservation seed mix and covered with a mat of spread hay mulch to provide immediate stabilization.
- (e) Following fill removal, re-establishment of proper wetland surface grades, and appropriate stabilization within the Swamp, plant trees and shrubs within the restored Swamp. The trees and shrubs must be obtained from nursery stock that has been raised in hydric conditions. If necessary, to

improve survivability, required tree and shrub plantings may be installed within small raised mounds (slightly elevated only) of high-organic plantable soil material (only).

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 the areas defined above. Tree species must include an equal distribution of at least three (3) of the following selections:

Red maple, *Acer rubrum*
Silver maple, *Acer saccharinum*
Black gum, *Nyssa sylvatica*
Green ash, *Fraxinus pennsylvanica*
Swamp white oak, *Quercus bicolor*
Pin oak, *Quercus palustris*
American elm, *Ulmus americana*
Weeping willow, *Salix babylonica*
Black willow, *Salix nigra*
Yellow birch, *Betula allegheniensis*

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 the area defined above. Shrub species must include an equal distribution of at least five (5) of the following selections:

Red osier dogwood, *Cornus stolonifera*
Elderberry, *Sambucus canadensis*
Northern arrowwood, *Viburnum recognitum*
Winterberry, *Ilex verticillata*
Highbush blueberry, *Vaccinium corymbosum*
Spicebush, *Lindera benzoin*
Swamp azalea, *Rhododendron viscosum*
Speckled alder, *Alnus rugosa*
Smooth alder, *Alnus serrulata*
Red chokeberry, *Aronia arbutifolia*
Buttonbush, *Cephalanthus occidentalis*
Maleberry, *Lyonia lingustrina*
Swamp Rose, *Rosa palustris*

- (f) Following fill removal, re-establishment of proper wetland surface grades, and appropriate stabilization within the Perimeter Wetlands and Riverbank Wetland, plant trees and shrubs throughout the altered Perimeter Wetlands and Riverbank Wetland on the Property.

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 the areas defined above. Tree species must include an equal distribution of at least four (4) of the following selections:

White pine, *Pinus strobus*
Northern white cedar, *Thuja occidentalis*
Red maple, *Acer rubrum*
Box elder, *Acer negundo*
Black cherry, *Prunus serotina*
White ash, *Fraxinus americana*
White oak, *Quercus alba*
Northern red oak, *Quercus rubra*
Sassafras, *Sassafras albidum*
Gray birch, *Betula populifolia*
Black birch, *Betula lenta*
American beech, *Fagus grandifolia*

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 the area defined above. Shrub species must include an equal distribution of at least five (5) 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*
Lowbush blueberry, *Vaccinium angustifolium*
Inkberry, *Ilex glabra*
Sweet pepperbush, *Clethra alnifolia*
Black chokeberry, *Aronia melanocarpa*
Witchhazel, *Hamamelis virginiana*

- (g) Plan balled and burlapped or transplanted evergreen tree species in a straight line, eight (8) feet on center, five (5) feet tall after planting, along the entire outer (landward) edge of the Perimeter Wetlands and Riverbank Wetland (whichever is more extensive). The tree species to be utilized for this screening line must include at least two (2) of the following selections:

Northern white cedar, *Thuja occidentalis*
White pine, *Pinus strobus*
Pitch pine, *Pinus rigida*
Eastern hemlock, *Tsuga canadensis*

Red cedar, *Juniperus virginiana*

- (h) If any or all of the required plantings fail to survive at least two (2) full growing seasons from the time they have been planted, replant and maintain the same plant species until such time that survival is maintained over two (2) full growing seasons.
 - (i) All areas of disturbed surface soils shall be loamed (if necessary) and seeded with a wetland seed mix (within the restored Swamp) or a wildlife conservation grass seed mixture (within the restored Perimeter Wetlands and Riverbank Wetland).
 - (j) Upon final stabilization of disturbed areas, all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) must be removed from the freshwater wetlands. Staked haybales, fiber logs, spread hay mulch, and other naturally-based erosion controls may remain in place to decompose naturally. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.
 - (k) All restored wetland areas, including replanted areas, must be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within other freshwater wetlands on the subject property, without first obtaining a valid permit from the DEM.
 - (l) All of the restoration work outlined above must be completed prior to **October 31, 2012**.
- (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 a representative of 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:

Twenty-Thousand Dollars (\$20,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM's 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 Notice of

Violation (“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’s 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:

Joseph J. LoBianco, 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 Johnston 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) Joseph J. LoBianco 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 extensions 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:

Raymond F. Acciardo
1133 Hartford Avenue
Johnston, RI 02919

Marie E. Acciardo
1133 Hartford Avenue
Johnston, RI 02919

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C12-0024, X-ref C-2201 and C04-0425

Respondents: Raymond and Marie Acciardo

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) and (2) – Alteration of Swamp; Fact C(3)(a)	Type I (\$ <u>10,000</u> Max. Penalty)*	Major	\$10,000	1 violation	\$10,000.00
D (1) and (2) – Alteration of Perimeter Wetland; Fact C(3)(b)	Type I (\$ <u>10,000</u> Max. Penalty)*	Moderate	\$4,500	1 violation	\$4,500.00
D (1) and (2) – Alteration of Swamp; Fact C(3)(c)	Type I (\$ <u>10,000</u> Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500.00
D (1) and (2) – Alteration of Perimeter Wetland and Riverbank Wetland; Fact C(3)(d)	Type I (\$ <u>10,000</u> Max. Penalty)*	Moderate	\$4,000	1 violation	\$4,000.00
SUB-TOTAL					\$20,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$20,000.00

PENALTY MATRIX WORKSHEET

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

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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>FACTORS CONSIDERED: 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 clearing, filling (in the form of soil material, boulders, rocks and stones, construction materials, and stored equipment/vehicles), grading, and creating soil disturbance within a Swamp. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: Prior to the unauthorized alterations, the Swamp was in a naturally vegetated, undisturbed condition, comprised primarily of mature deciduous forested wetland habitat.</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: Full duration unknown – at least 25 years. DEM issued a notice of violation to Raymond Acciardo on April 8, 1987 for unauthorized alterations within the Swamp. The violation has continued since that time.</p> <p>(F) Areal extent of the violation: The aerial extent of the violation is approximately 77,000 square feet.</p>		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** A notice of violation was issued to Raymond Acciardo on April 8, 1987 for altering the Swamp. Numerous meetings and mediation to attempt to resolve the notice were unsuccessful. Reasonable and appropriate steps to prevent and/or mitigate the noncompliance have not been taken.
- (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:** A notice of violation was issued to Raymond Acciardo on April 8, 1987 for altering the Swamp and Perimeter Wetland. That notice remains unresolved.
- (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 have complete control over the violation, are aware of the wetlands on the property, and have 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.

<u>X</u> MAJOR	MODERATE	MINOR
----------------	----------	-------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: *Alteration of Perimeter Wetland, Fact C(3)(b)*

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

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>FACTORS CONSIDERED:</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 clearing, filling (in the form of soil material, boulders, rocks and stones, construction materials, and stored equipment/vehicles), 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: Prior to the unauthorized alterations, the great majority of the Perimeter Wetland was in a naturally vegetated, undisturbed condition, comprised primarily of mature deciduous forested upland habitat. In the southern portion of the property (extending approximately 250 feet northerly of Hartford Avenue), the Perimeter Wetland was substantially cleared and altered as of the adoption date of the Freshwater Wetlands Act.</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: Full duration unknown – at least 25 years. DEM issued a notice of violation to Raymond Acciaro on April 8, 1987 for unauthorized alterations within the Perimeter Wetland. The violation has continued since that time.</p> <p>(F) Areal extent of the violation: The aerial extent of the violation is approximately 25,500 square feet.</p>		
<p>(continued)</p>		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** A notice of violation was issued to Raymond Acciaro on April 8, 1987 for altering the Perimeter Wetland. Numerous meetings and mediation to attempt to resolve the notice were unsuccessful. Reasonable and appropriate steps to prevent and/or mitigate the noncompliance have not been taken.
- (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:** A notice of violation was issued to Raymond Acciaro on April 8, 1987 for altering the Swamp and Perimeter Wetland. That notice remains unresolved.
- (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 have complete control over the violation, are aware of the wetlands on the property, and have 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
--------------	---------------------------------	--------------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$4,500	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: *Alteration of Swamp, Fact C(3)(c)*

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

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</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 clearing, filling (in the form of soil material, boulders, rocks and stones, slash, and other debris material), excavating, grading, and creating soil disturbance within a second location within the 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: Prior to the unauthorized alterations, the Swamp was in a naturally vegetated, undisturbed condition, comprised primarily of mature deciduous forested wetland habitat.</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: Full duration unknown – at least 9 years. A review of aerial photographs revealed that the alterations were present as of April 2003.</p> <p>(F) Areal extent of the violation: The aerial extent of the violation is approximately 1,500 square feet.</p>		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** A notice of violation was issued to Raymond Acciardo on April 8, 1987 for altering the Swamp and Perimeter Wetland. Despite this notice, which remains unresolved after numerous meetings and mediation sessions, the Respondents further altered the Swamp. Reasonable and appropriate steps to prevent and/or mitigate the noncompliance have not been taken.
- (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:** A notice of violation was issued to Raymond Acciardo on April 8, 1987 for altering the Swamp and Perimeter Wetland. That notice remains unresolved.
- (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 have complete control over the violation, are aware of the wetlands on the property, and have 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	MODERATE	<u> X </u> MINOR
--------------	-----------------	----------------------------------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$1,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: *Alteration of Perimeter Wetland and Riverbank Wetland, Fact C(3)(d)*

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

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>

DEVIATION FROM THE STANDARD
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents altered freshwater wetlands by clearing, filling (in the form of soil material, boulders, rocks and stones, slash, and other debris material), excavating, grading, and creating soil disturbance within a Perimeter Wetland and Riverbank Wetland. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.
- (B) **Environmental conditions:** Prior to the unauthorized alterations, the great majority of the Perimeter Wetland and Riverbank Wetland was in a naturally vegetated, undisturbed condition, comprised primarily of mature deciduous forested upland habitat. In the southern portion of the property (extending approximately 250 feet northerly of Hartford Avenue), the Perimeter Wetland and Riverbank Wetland were substantially cleared and altered as of the adoption date of the Freshwater Wetlands Act.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Full duration unknown – at least 9 years. A review of aerial photographs revealed that the alterations were present as of April 2003.
- (F) **Areal extent of the violation:** The aerial extent of the violation is approximately 22,550 square feet.

(continued)

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** A notice of violation was issued to Raymond Acciardo on April 8, 1987 for altering the Swamp and Perimeter Wetland. Despite this notice, which remains unresolved after numerous meetings and mediation sessions, the Respondents altered additional Perimeter Wetland and Riverbank Wetland. Reasonable and appropriate steps to prevent and/or mitigate the noncompliance have not been taken.
- (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:** A notice of violation was issued to Raymond Acciardo on April 8, 1987 for altering the Swamp and Perimeter Wetland. That notice remains unresolved.
- (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 have complete control over the violation, are aware of the wetlands on the property, and have 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
-------	-----------------------	-------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$4,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500