STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

IN RE: Frederick W. and Louisa G. Williams
Notice of Violation No. C-2771

DECISION AND ORDER

This matter is before this Hearing Officer pursuant to the R.I. Freshwater Wetlands Act R.I.G.L. § 2-1-18 et seq. ("Act"), specifically §§ 2-1-21, 2-1-23 and 2-1-24 as amended, and R.I.G.L. § 42-17.1-2, and Rule 9.00 of the Rules and Regulations Governing the Enforcement of the Freshwater Wetlands Act ("Regulations") adopted pursuant thereto. The hearing was held in accordance with the Administrative Procedures Act (Chapter 42-35 of the Rhode Island General Laws) as amended, and the Administrative Rules of Practice and Procedure of the Department of Environmental Management.

The Division of Groundwater and Freshwater Wetlands ("Division") of the Department of Environmental Management ("DEM") issued a Notice of Violation and Order and Penalty (NOVAP) dated December 30, 1988 to Frederick W. and Louisa G. Williams ("Respondents").

The NOVAP alleged violations of §2-1-21 of the R.I. General Laws as amended in that Respondents proceeded to alter freshwater wetlands in two (2) instances without having first obtained the approval of the Director of DEM; said NOVAP alleged specifically that an inspection of property owned by them and located west of West Main Road, approximately 1000 feet south of the intersection of Swamp Road and West Main Road opposite utility pole no. 338, Assessor's Plat 7, Lot 8, in the Town of Little Compton, Rhode Island ("site"), on December 6, 1988 at 12:30 p.m. revealed that in violation of

R.I.G.L. Section 2-1-21, they did accomplish or permit alteration of freshwater wetlands by:

1. Clearing, grading, filling, stockpiling debris, constructing a shed and portions of an individual sewage disposal system, and creating soil disturbance within a swamp located along the western portion of their property. That said alterations have resulted in the loss and disturbance of approximately 7200 square feet of wetland.

2. Clearing, grading, filling, stockpiling debris, constructing a house and portions of an individual sewage disposal system and creating soil disturbance in that area of land within 50-feet of the edge of the swamp mentioned above. That these alterations have resulted in the loss and disturbance of approximately ± 5500 square feet of wetland.

Said NOVAP ordered the Respondents to cease and desist immediately from any further alteration of the described freshwater wetlands and to restore said freshwater wetlands to their state as of July 16, 1971 insofar as possible by February 15, 1989 and also imposed an administrative penalty assessment of $1,000.00 for each violation, making a total of $2,000.00.

Respondents thereupon requested a hearing on the NOVAP.

Catherine Robinson Hall, Esq., represented the Division and John B. Webster, Esq. represented the Respondents.

The requisite Notice of Administrative Hearing and Pre-Hearing Conference was sent informing Respondents of the time, date and place of same, and at which hearing an opportunity was afforded Respondents to respond, cross-examine witnesses, present evidence and testimony on all issues involved.

The Pre-Hearing Conference was held on March 7, 1991 and the requisite Pre-Hearing Conference Record was prepared by the Hearing Officer. No

requests to intervene were presented.

The adjudicatory hearing commenced on September 4, 1991 and continued on September 6, 16 and 17, 1991. The Hearing Officer was in receipt of the post hearing briefs on or about October 31, 1991.

The Division bore the burden of proving by a preponderance of the evidence that Respondents violated the aforementioned law and regulations.

The following documents were admitted into evidence as full exhibits and marked numerically as follows:

EXHIBIT NO.	DESCRIPTION
DEM 1.	Resume of Stephen J. Tyrrell (2 pp).
DEM 2.	Wetlands Inspection Report by Stephen Tyrrell, dated December 6, 1988 (2 pp).
DEM 3.	A-F Six photographs of the site, photographed by Stephen Tyrrell, dated December 6, 1988.
DEM 4.	Resume of Dean H. Albro (3 pp).
DEM 5.	Wetlands Preliminary Determination Application, date received by the Department December 30, 1987 (1 p).
DEM 6.	Site plan entitled "Topo Survey, Little Compton, R.I. Plat 7, Lot 8, W. Main Rd., for Frederick W. and Louisa G. Williams" dated October, 1987 and received by the Department December 30, 1987 (1 p).
DEM 7.	Freshwater Wetlands Review Sheet and Biological Inspection Report dated February 1, 1988 (2 pp).
DEM 8.	Letter to W. Frederick W. and Louisa G. Williams from Dean H. Albro dated February 15, 1988 (2 pp).
DEM 9.	Notice of Violation and Order, dated December 30, 1988 (3 pp).
DEM 10.	Letter to Department of Environmental Management, Division of Groundwater and Freshwater Wetlands from Attorney John B.

Webster requesting a hearing, date received by the Department January 11, 1989 (1 p).

Stephen Tyrrell was the first witness called by the Division. He has a Bachelor of Science Degree in natural resources from the University of Rhode Island and is employed by DEM as a Principal Natural Resource Specialist. Mr. Tyrrell was qualified as an expert in wetlands ecology and also aerial photographic interpretation.

He testified that he visited the site approximately five times, initially on December 6, 1988, in response to a complaint that was received by the Department on November 7, 1988. On his first visit he walked around the site to determine if freshwater wetlands were present and took a number of measurements. He measured from fixed reference points in the field where the actual site was located west of West Main Road in Little Compton, the edge of the swamp and the distance from the swamp edge that was present on the property in relation to the alteration that occurred there and also the intersection of the road.

Mr. Tyrrell stated that he was able to identify the presence of freshwater wetlands on the site because of the prominence of wetland indicator species, the different species of vegetation present, the indications of water at or near the surface and some pooling of water on the site. It was this witness's expert opinion that freshwater wetlands were present on the site which consisted of a wooded swamp and a fifty (50) foot perimeter wetland. He based this conclusion on the predominance of the species of hydrophytic vegetation (which are examples of wetland indicator species) that he observed on the site, in addition to indications of water at

or near the surface of the ground. He also utilized aerial photographs to locate the edge of the freshwater wetlands even though the wetlands area was already altered.

Mr. Tyrrell acknowledged that the size of the area was a factor and that a swamp must be no less than three acres in size and described the methods used to determine if the wetland meets the three acre criteria. He described the condition of the site on his initial visit, wherein he observed a foundation and shed present on the site. Also present on the site was a large filled area to the north of the foundation with trenches on top which indicated to him that it was an individual sewage disposal system ("ISDS") installation. He stated there were large slash piles on the site, and that the area was cleared and graded. He then identified where the swamp existed through the altered part of the property by the use of aerial photo interpretation. He further explained that through his interpretation of 1970 aerial photographs of the site, he was able to determine that the alteration did not occur prior to passage of the Act. It was further elicited from this witness that based on his investigation and measurements made at the site, he determined that the alterations consisting of shed construction, deposition of slash material, filling for portions of the ISDS installation, clearing and grading and filling, occurred in the wooded swamp area; and that the foundation construction, ISDS installation with associated filling and clearing and grading occurred within the 50 foot perimeter wetland.

Mr. Tyrrell testified that through utilization of aerial photographic interpretation, his measurements, and the Town of Little Compton's official

tax assessor's maps and plat cards, he concluded that the Respondents owned the property on which the alterations took place. Also, he researched the files at the Department and determined that the there was a previous application submitted by the Respondents for a verification of wetlands edge on the subject site.

It was this witness's testimony that around December 27, 1988 he revisited the site and observed people and trucks dropping off lumber and building materials at the site. He identified himself to a Stephen Arruda (a gentleman at the scene) and explained to him that there were violations of the Freshwater Wetlands Act on the property and gave instructions that work be stopped on the property. He thereupon issued a Cease and Desist Order to Mr. Arruda to refrain from conducting any activities in violation of the Freshwater Wetlands Act. Mr. Tyrrell returned to the site with his supervisor, Dean Albro, on January 25, 1989 at which time they walked around and observed the site.

It was elicited in cross-examination of Mr. Tyrrell that he never performed any further investigation to determine who specifically altered the wetlands in question; that he did not know who physically filled, cleared and graded the wetland nor if the Williams had permitted someone to alter the wetland.

Mr. Tyrrell elaborated on what he observed on his initial inspection of December 6, 1988 and further explained his measurements and determination that a portion of the swamp was cleared. He explained that the clearing material was stockpiled on the southwestern part of the property where the

alteration had taken place; the clearing accomplished on the site was very recent; and the fill had very recently been pushed into the swamp for the ISDS that was under construction at the site; the soil was saturated and there were wetland indicator species immediately adjacent to the fill for the septic system, which was within the 50 foot wetlands perimeter; and the foundation present at the site appeared to have been constructed of new concrete material.

The next witness called by the Division was Mr. Dean Albro, who has a Bachelor of Science Degree in Resource Development (Natural Resources) from the University of Rhode Island, with a concentration in wildlife management. Mr. Albro was qualified as an expert in wetlands ecology. He was familiar with the site based upon the reports and documentation submitted to him and during the development of a file in this case and the actions taken by the Division in this particular matter. His first involvement with this matter occurred when he rendered a determination that freshwater wetlands were present on the subject property pursuant to an application for a preliminary determination submitted on behalf of Respondents. Said application was submitted to the Wetlands Section, along with a site plan, on December 30, 1987. The site plan showed the general location of the property to be reviewed and identified it as being Plat 7, Lot 8, West Main Road, Little Compton, Rhode Island for Frederick W. and Louisa G. Williams.

Mr. Albro testified that he relied upon his review of the freshwater wetland review sheet that was prepared by the Division dated February 9, 1988, the full file, the application form and site plan in making the

determination on the application for a preliminary determination. That the investigation conducted by the Division as a consequence of said application revealed the presence of freshwater wetlands, a swamp and a 50 foot perimeter wetland on the subject property.

Mr. Albro (as supervisor of the Freshwater Wetlands Section) notified Mr. Williams by letter dated February 15, 1988 of the Division's findings that freshwater wetlands were present on the subject property and that no alterations of those wetlands should take place without first obtaining an approval from the Department.

It was this witness's further testimony that he supervised the subsequent enforcement investigation of the site; and as administrator and supervisor he made the final decision to issue the Notice of Violation to the Respondents dated December 30, 1988. This decision resulted from his review of the biologist's reports, photographs taken at the site, recommendations made by the biologist, the site plan that had been submitted as part of the preliminary determination application, and the pertinent Regulations.

Mr. Albro described the factors that the Division relied on and what he took into account concerning the penalty assessment for the two citations listed in the Notice of Violation. He stated that the first citation took into consideration the indication of 7,200 square feet of alterations in a swamp along with the individual activities noted, the actual and potential impact on the public health, safety, welfare and interest in the environment, the amount of penalty necessary to assure compliance and to deter future non-compliance, whether the person assessed the penalty took reasonable and

appropriate steps to prevent the harm that was occasioned by the act of non-compliance, and the penalty matrix in the Regulations. He placed the penalty assessment in the major category, which resulted in the assessment of the One Thousand Dollar maximum penalty for the first citation.

Also considered was the further potential impact that would result due to erosion and subsequent sedimentation of eroded material down to the wetland area; and that unless the ordered restoration takes place, these impacts would result in the permanent loss of wildlife habitat and recreational environmental values.

The second citation also assessed the maximum penalty of One Thousand Dollars essentially based upon the same factors in the first citation, which penalty was imposed to assure that expansion of those activities (completion and utilization of the septic system) did not take place.

Mr. Albro satisfactorily explained the importance of the wetlands being restored to the natural conditions that they were in prior to the alterations.

It was elicited in cross examination of Mr. Albro that although the Division had reason to believe that the Respondents or their agents altered the wetlands on this property, he could not state with certainty that such an agency relationship actually existed, and that he was unable to state who physically altered the wetlands.

After the Division had completed the presentation of evidence and rested its case, the Respondents made an oral Motion to Dismiss pursuant to Superior Court Rule 41 (B)(2). The Hearing Officer declined to rule on said Motion until the close of all the evidence, at which time the Respondents rested

without presenting any evidence, and thereupon renewed their Motion to Dismiss. Necessarily, this Decision and Order acts as a decision on that Motion.

Respondents argue that the Division failed to prove by a preponderance of the evidence that the Respondents or their agents violated the Freshwater Wetlands Act. Also Respondents maintain that the Order that the Respondents restore said freshwater wetlands to their state as of July 16, 1971 is in the nature of an injunction, and as such fails to inform Respondents of what is expected of them in clear, certain and specific terms so that they can ascertain their duty or obligations. Also, Respondents urge that such an Order cannot be issued which requires that the premises be restored to the satisfaction of the Division.

Division argues that it is entitled to the relief requested because the Director of DEM is empowered by statute to give notice of an alleged violation of law to the person responsible whenever the Director determines that there are reasonable grounds to believe that there is a violation of any provision of law or regulation. Division maintains that it has met the requisite burden of proof in that it has shown by a preponderance of the evidence that it properly issued the NOVAP. The Division also argues that it has submitted ample and uncontradicted evidence to demonstrate the needs for restoration, and to establish that the penalty imposed for each citation was reasonable and not excessive.

R.I.G.L. § 2-1-21 (a) provides that:

> "No person ... may ... add to or take from or otherwise alter the character of any freshwater

> wetland as herein defined without first obtaining the approval of the director of DEM.

R.I.G.L. § 2-1-23 provides that:

> "in the event of a violation of § 2-1-21, the director of environmental management shall have the power to order complete restoration of the freshwater wetland area involved by the person or agent responsible for the violation. If the responsible person or agent does not complete the restoration within a reasonable time following the order of the director of the department of environmental management, the director shall have the authority to order the work done by an agent of his choosing and the person or agent responsible for the original violation shall be held liable for the cost of the restoration. The violator shall be liable for a fine of up to one thousand dollars ($1,000) for each violation".

R.I.G.L. § 2-1-24 provides that:

> "the Director shall have the power by written notice to order the violator to cease and desist immediately and/or restore the wetlands to their original state insofar as possible. Any order or notice to restore wetlands shall be eligible for recordation ...".

R.I.G.L. § 42-17.1-2 (v) empowers the Director of DEM:

> "to impose administrative penalties in accordance with the provisions of Chapter 17.6 of this title;"

R.I.G.L. § 42-17.6-2 provides that:

> "the Director may assess an administrative penalty on a person who fails to comply with any provision of any rule, regulation, order, permit, license, or approval issued or adopted by the director, or of any law which the director has the authority or responsibility to enforce".

R.I.G.L. § 42-17.6-6 outlines the considerations for determining the amount of administrative penalties for environmental violations to be imposed

by the Director.

R.I.G.L. § 42-17.6-7 limits:

> "the administrative penalty to one thousand dollars ($1,000) for each violation or failure to comply unless a different amount is authorized by statute as a civil penalty for the subject violation".

I am compelled to comment that the derogatory statements in the Respondents' brief concerning the testimony of Mr. Tyrrell were unwarranted. Although this witness was somewhat hesitant in responding to certain questions, his answers nevertheless appeared to be truthful and straight forward. He acknowledged that he answered incorrectly as to some minor and inconsequential details but this did not make his testimony suspect. I find that Mr. Tyrrell's description of the results of his investigation in this matter and his consequential findings and opinions were sincere and honest. He did not alter his answers concerning any significant portion of his testimony despite an extensive and exhaustive cross-examination, which serves to enhance his credibility as a witness.

Mr. Tyrrell's expert opinion as to the presence of a wooded swamp and a fifty (50) foot perimeter wetland on the site was not refuted by Respondents and is uncontroverted. This testimony was unchallenged and is therefore deemed conclusive by this Hearing Officer as the trier of fact. State v. A. Capuano Bros., Inc. 120 R.I. 58 (1978).

R.I.G.L. § 42-17.1-2 (u) empowers the Director of DEM:

> "to give notice of an alleged violation of law to the person responsible therefore whenever the director determines that there are reasonable grounds to believe that there is a violation

> of any provision of law within his or her jurisdiction or of any rule or regulation adopted pursuant to authority granted to him or her, unless other notice and hearing procedure is specifically provided by that law. Nothing in this chapter shall limit the authority of the attorney general to prosecute offenders as required by law".

The Division introduced ample and convincing proof that (1) the Respondents were the owners of the subject property at all pertinent times, (2) there were freshwater wetlands present on the subject site which are subject to the jurisdiction of the Division, (3) said freshwater wetlands were altered after the enactment of the Act and just prior to the issuance of the NOVAP, (4) no permit was issued by the Division for said alterations and they were not authorized as required by the Act, and (5) said alterations caused a permanent loss and disturbance of wildlife habitat which affected the character and value of the freshwater wetlands on the site.

The Division also proved that the Respondents had filed an application for a verification of the the freshwater wetlands edge on their subject property shortly before the NOVAP was issued by the Division and that the Respondents had proposed to build a home on the site at the approximate time of the alterations. The discovery of recent foundation construction and ISDS installation, with associated clearing, grading and filling of the freshwater wetlands located on Respondents' property coupled with lumber and building materials being dropped off at the site is some indication that this activity was in furtherance of Respondents' plans to construct a home at said site.

A review of the afore-mentioned facts clearly establishes that there were reasonable grounds for the Director of DEM to believe that the Respondents

were responsible for the subject violations of the provisions of the Act and Regulations and therefore warranted notice of said violation to the Respondents, and justified the issuance of the NOVAP in this matter.

Mr. Tyrrell testified that during his visit to the subject site on December 27, 1988 he issued a Cease and Desist Order to Mr. Stephen Arruda, who was present at the scene. This gentleman obviously was in furtherance of the construction work taking place on the subject property.

The Division did not produce this witness at the hearing and failed to introduce any direct or positive evidence that Mr. Arruda was in the employ of Respondents, or that Respondents, or someone on their behalf, had ordered said materials or that said work was being performed on their behalf.

Mr. Albro's testimony further substantiated that the Division had reasonable grounds to believe that Respondent or their agents altered the wetlands on the subject property. He also established the impact that said alterations would have on the wetlands, the permanent loss of wildlife habitat and the environmental and recreational values attributed to such wetlands area, the imperative need for restorations, and the reasonableness of the penalties imposed. This credible testimony was not challenged by the Respondents, and is uncontroverted. However, Mr. Albro during cross-examination candidly admitted that he was not certain that the requisite agency relationship existed between the Respondents and those who altered the wetlands.

R.I.G.L. § 42-17.6-4 (a) states that:

> "in any adjudicatory hearing authorized pursuant to chapter 35 of title 42, the director shall, by

> a preponderance of the evidence, prove the occurrence of each act or omission alleged by the director".

Rule 15.00 (o) of the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matter states that:

> "the weight to be attached to any evidence in the record will rest within the sound discretion of the Administrative Hearing Officer".

Although it is not necessary for the Division to prove that the Respondents personally altered the freshwater wetlands in order to find Respondents responsible for violation of the Act, it is necessary to prove either by direct evidence or sufficient circumstantial evidence that said alterations were conducted through the Respondents' agents at their direction. The Division must prove that the Respondents by their agents or servants violated the Act. State v. Distante, 455 A.2d 305 (R.I. 1983).

It is perhaps worthy of mention that although Respondents may have been present at the preliminary proceedings, neither of them appeared at any of the subsequent adjudicatory hearings. Also the address listed for the Respondents in the file documents indicates that they live outside the confines of the State of Rhode Island. Assuming arguendo, that this thwarted the Division's intention to produce Respondents in order to obtain their testimony that they were responsible for the alterations which took place on their subject property, this does not alter Division's obligation to sustain its burden of proof.

It is a well established principle that the trier of fact (in non jury cases) may weigh the evidence, pass on the credibility of witnesses and draw inferences. Although the necessary inferences can be made from the evidence

introduced by the Division that there were reasonable grounds to support the issuance of the NOVAP, they do not reach the level necessary to support the Division's burden of proof at the hearing. This burden requires more than mere speculation and conjecture in order to sustain the imposition of penalties and to compel Respondents to expend considerable sums of money in restoration costs.

The record is devoid of any direct evidence or adequate circumstantial evidence to substantiate that it was the Respondents or their agents or servants who altered the subject wetlands. No evidence was introduced as to any connection between Mr. Arruda (to whom the Cease and Desist Order was issued) and the Respondents. The evidence introduced does not supply the requisite quantum to support a finding that the alterations were conducted at Respondents' direction or that the Respondents are responsible for same.

The Division has failed to prove by a preponderance of the evidence that the Respondents or their agents or servants violated the Act or Regulations. Therefore the Respondents can not be compelled to incur the expenses necessary to restore their property nor should they be required to pay the penalties imposed, and the violation as against Respondents should therefore be dismissed.

In light of the foregoing, it is unnecessary to consider Respondents' other arguments as to the invalidity of the Division's Order as to restoration or penalties.

FINDINGS OF FACT

After reviewing the documentary and testimonial evidence of record, I find as a fact, the following:

1. The Respondents, Frederick W. and Louisa G. Williams owned that property located at west of West Main Road, opposite utility pole no. 338, and identified as Tax Assessor's Plat 7, Lot 8, in the Town of Little Compton, Rhode Island at all times relevant to the instant hearing.

2. Respondent Frederick Williams filed an Application for a Preliminary Determination with the Division for their subject property on December 30, 1987.

3. The Division inspected Respondents' property on January 29, 1988 and made a Preliminary Determination as to the existence and extent of freshwater wetlands on said property.

4. The Division notified the Respondents on February 15, 1988 that a swamp/marsh complex and its associated fifty (50) foot perimeter wetlands were present on their property.

5. The Division inspected Respondents' property on December 6, 1988 and discovered the existence of freshwater wetlands alterations on Respondents property, consisting of clearing, grading, filling, stockpiling of debris construction of a shed and portions of an individual ISDS and house within the swamp and its fifty (50) foot perimeter wetlands located on Respondents' property.

6. The Division issued a Cease and Desist Order to an individual working on Respondents' property (a Mr. Stephen Arruda) on December 27, 1988.

7. The Division issued a Notice of Violation and Order and Penalty to the Respondents dated December 30, 1988.

8. The Respondents filed a timely request for an administrative hearing on January 11, 1989.

9. State jurisdictional freshwater wetlands exist on Respondents' property, consisting of a wooded swamp and its associated fifty (50) foot perimeter wetlands.

10. The freshwater wetlands on Respondents' property had not been altered at the time of the Preliminary Determination inspection by the Division on January 29, 1988.

11. The freshwater wetlands on Respondents' property were altered by filling, construction and soil disturbance which occurred recently prior to the Division's inspection on December 6, 1988 (in response to a complaint received by the Division on November 7, 1988).

12. Said alterations occurred in and affected the character of the jurisdictional freshwater wetlands at the site, and will result in the permanent loss of wildlife habitat and the environmental and recreational values attributed to such wetlands area.

13. The freshwater wetlands on the subject property were altered after the enactment of the Act and without a DEM wetlands alteration permit and were therefore in violation of the Freshwater Wetlands Act.

14. Respondents' Preliminary Determination Application and Site Plan dated December 30, 1987 indicated that they were contemplating construction on the subject property similar to what the Division observed on December 6, 1988.

15. The Division's search of the Tax Assessor's records of the Town of Little Compton indicated that the Respondents were listed as the record owners of the subject property at the time of the alterations.

16. The measurements taken at the site by the Division located the alterations of freshwater wetlands on the Respondents' property.

17. The NOVAP issued to the Respondents' in instant action involves the same property for which Respondents' had recently filed their Preliminary Determination Application.

18. The Division has jurisdiction over the freshwater wetlands located on the Respondents' subject property.

19. Restoration of the freshwater wetlands on Respondents' property is necessary in order to return the wetlands to their natural unaltered condition.

20. The Division had reasonable grounds to believe that the Respondents were in violation of the Freshwater Wetlands Act and was therefore warranted in issuing the NOVAP to the Respondents.

21. The Division failed to prove by a preponderance of the evidence that the Respondents either directly or through their agents or servants did accomplish or permit the alterations of the freshwater wetlands on Respondents' property.

CONCLUSIONS OF LAW

Based upon the foregoing facts and testimonial and documentary evidence

of record, I conclude as a matter of law that:

1. The DEM has jurisdiction over the freshwater wetlands located on Respondents' property.

2. The freshwater wetlands located on Respondents' property were altered without a wetlands alteration permit from DEM.

3. The Division had reasonable grounds to believe that the Respondents were in violation of the Freshwater Wetlands Act which warranted the issuance of the NOVAP to the Respondents.

4. The Division failed to prove by a preponderance of the evidence that the Respondents authorized or permitted anyone to conduct said alterations to the freshwater wetlands existing on their property or that said alterations were conducted at the direction of the Respondents.

5. The Division failed to prove by a preponderance of the evidence that the Respondents, either directly or through their agents or servants, altered the freshwater wetlands in violation of § 2-1-21 of the R.I. General Laws as alleged in the NOVAP dated December 30, 1988.

Therefore, it is

ORDERED

1. That the Notice of Violation and Order and Penalty issued to the Respondents dated December 30, 1988 be and is hereby dismissed.

2. This Decision and Order is without prejudice to the rights of the Division to take action against a responsible party for any further unpermitted alterations of the subject freshwater wetlands as they existed on the property prior to the instant alterations.

I hereby recommend the foregoing Decision and Order to the Director for issuance as a Final Order.

1-17-92
Date

Joseph F. Baffoni
Joseph F. Baffoni
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, 4th Floor
Providence, RI 02908
(401) 277-1357

Entered as a Final Order on this _____ day of _____, 1992.

_____
Date

_____
Louise Durfee
Director
Department of Environmental Management
9 Hayes Street
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Decision and Order to be forwarded registered mail, return receipt request to John B. Webster, Esq., Adler, Pollock & Sheehan Inc., 2300 Hospital Trust Tower, Providence, Rhode Island 02903; and via inter-office mail to Catherine Robinson Hall, Esq., Office of Legal Services, 9 Hayes Street, Providence, Rhode Island 02908 on this 17th day of February, 1992.

Gail Greene

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