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PAGE 12

LWS/SPECTOR WOODBRIDGE CO. LLC, WILLIAM SPECTOR Individually, DC TRUCKING CORPORATION, THOMAS GIORDANO Individually, and DONNA GIORDANO Individually
Administrative Order and Notice of Civil Administrative Penalty
Page 15 of 15

Administrative Hearing Request Checklist
and Tracking Form

I. Document Being Appealed: EA ID # PEA040001 - 1225-02-0020.1

8/5/04

Date Document Issued

II. Person Requesting Hearing:

LWS/SPECTOR WOODBRIDGE CO., LLC.

NONE

Name/Company

Name of Attorney (if applicable)

WILLIAM SPECTOR Individually156 Second St, PO Box 29, Perth Amboy, NJ

Address

08862

Address

732-442-6990

Telephone #

Telephone #

III. Please Include the Following Information As Part of Your Request:

- A. The date the alleged violator received the Enforcement Document.
- B. A copy of the Enforcement Document and a list of all issues being appealed.
- C. An admission or denial of each of the findings of fact, or a statement of insufficient knowledge;
- D. The defenses to each of the findings of fact in the enforcement document;
- E. Information supporting the request;
- F. An estimate of the time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed and dated with all of the information listed above, including attachment, to:

1. New Jersey Department of Environmental Protection
Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
401 E. State Street, P.O. Box 402
Trenton, New Jersey 08625

2. Barbara Baus, Supervisor
Coastal and Land Use Compliance and Enforcement
PO Box 422
Trenton, NJ 08625-0422

IV. Signature: [Signature]

Date: 8/25/04

LWS/SPECTOR WOODBRIDGE CO. LLC, WILLIAM SPECTOR Individually
PO BOX 29
PERTH AMBOY, NJ 08865

Administrative Hearing Request Checklist & Tracking Form response:

Document: EA ID # PEA040001-1225-02-0020.1

The following are the responses to part III.

- A. August 12, 2004
- B. See Attached
- C. We deny all allegations against LWS/SPECTOR WOODBRIDGE CO. LLC, WILLIAM SPECTOR Individually.
- D. We did not operate the site, we did not encroach on wetlands and we did not encroach on the waterfront development zone.
- E. We request the hearing in order to support our denials.
- F. 1 (One) week or less.
- G. Not Applicable.
- H. Yes, willing to negotiate a settlement.
- I. See Attached.

SENT VIA CERTIFIED MAIL TO:

NJDEP: 7003 1680 0004 0509 0845

Coastal & Land Use Compliance: 7003 1680 0004 0509 0852

B



FILE COPY

James E. McGreevey
Governor

State of New Jersey
Department of Environmental Protection
Coastal and Land Use Compliance and Enforcement
Northern Section
PO Box 422
Trenton, New Jersey 08625-0422
Telephone: 609-292-1240 Fax: 609-633-6798

Bradley M. Campbell
Commissioner

MAY 17 2004

CERTIFIED MAIL 7003-1010-0002-6061-9547
RETURN RECEIPT REQUESTED
Spector Woodbridge Company Corporation
156 2nd Street
Perth Amboy, NJ 08861

CERTIFIED MAIL 7003-1010-0002-6061-9554
RETURN RECEIPT REQUESTED
Tom Giordano
20 Madison Avenue
Woodbridge, NJ 07001-1419

CERTIFIED MAIL 7003-1010-0002-6061-9561
RETURN RECEIPT REQUESTED
DC Trucking Corporation
20 Madison Avenue
Woodbridge, NJ 07001-1419

CERTIFIED MAIL 7003-1010-0002-6061-9578
RETURN RECEIPT REQUESTED
Donna Giordano
20 Madison Avenue
Woodbridge, NJ 07001-1419

RE: LWS CORP/SPECTOR WOODBRIDGE CO LLC
Administrative Order and Notice of Civil Administrative Penalty Assessment
EA ID #: PEA040001 - 1225-02-0020.1

Dear Respondents:

Enclosed for service upon you is an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) issued by the Department. Contained within the enclosed document is a notice and instructions for requesting an Administrative Hearing. Failure to request a hearing within 20 days as per the instructions will result in loss of your right to a hearing.

If you have any questions concerning the enclosed document, you may contact Case Manager, Trent Todash of my staff at (609) 292-1240 or by letter at the above address.

Sincerely,

Scott Brubaker, Chief
Bureau of Coastal and Land Use
Compliance and Enforcement

Chris Jones, Land Use Regulation Program, NJDEP
Larry Clement, Zoning Official, Woodbridge Township
John Jennings, Freehold Soil Conservation District



James E. McGreevey
Governor

State of New Jersey
Department of Environmental Protection

Bradley M. Campbell
Commissioner

Coastal and Land Use Compliance and Enforcement
Northern Section
PO Box 422
Trenton, NJ 08625-0422
Telephone: (609) 292-1240 Fax: (609) 633-6798

IN THE MATTER OF	:	ADMINISTRATIVE ORDER
SPECTOR WOODBRIDGE CO. LLC	:	AND
and	:	NOTICE OF CIVIL ADMINISTRATIVE
DC TRUCKING CORPORATION, and	:	PENALTY ASSESSMENT
TOM GIORDANO, and	:	
DONNA GIORDANO	:	
Individually	:	

EA ID # PEA040001 - 1225-02-0020.1

This Administrative Order and Notice of Civil Administrative Penalty Assessment (hereinafter AONOCAPA) is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter NJDEP or the Department) by N.J.S.A. 13:1D-1 et seq., the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. (the "Act"), and the Waterfront Development Law, N.J.S.A. 12:5-3 and 12:5-6, and duly delegated to the Assistant Commissioner of Land Use Management and Compliance and her assignees pursuant to N.J.S.A.13:1B-4.

FINDINGS

1. SPECTOR WOODBRIDGE CO LLC, 156 2nd Street, Perth Amboy, NJ 08861 owns the site located at Berry Street, Block(s) and Lot(s) [531B, 100], Woodbridge Township, Middlesex County, New Jersey (ID# 1225-02-0020.1). One of this site's lessors is DC TRUCKING CORPORATION that is owned and operated by TOM GIORDANO and DONNA GIORDANO, 20 Madison Avenue, Woodbridge, NJ 07001-1419. DC TRUCKING, TOM GIORDANO and DONNA GIORDANO are responsible for the stockpiling of fill material measuring approximately 5 acres x 75' high within 500' of the mean high water line, and within a State regulated freshwater wetland and freshwater wetland transition area. Hereinafter, SPECTOR WOODBRIDGE CO, LLC, DC TRUCKING CORPORATION, TOM GIORDANO individually, and DONNA GIORDANO individually are referred to as "RESPONDENTS" and this action is issued to each Respondent jointly and severally.
2. As the result of a compliance evaluation(s) conducted on July 2, 2002, May 28, 2003, and

March 10, 2004, the Department has determined that the RESPONDENTS failed to comply with applicable requirements as follows:

Requirement: Pursuant to N.J.A.C. 7:7A-2.6(a), the removal, excavation or disturbance of the soil; dumping or filling with any material; erection of structures; placement of pavements; destruction of plant life which would alter the existing pattern of vegetation; and placement of any portion of a residential development project as defined at N.J.A.C. 7:7A-1.4 within a freshwater wetland transition area are regulated activities which require prior permit approval from the Department. [N.J.A.C. 7:7A- 2.6(a)]

Description of Noncompliance: the performance of unauthorized regulated activities within a freshwater wetland transition area. More specifically, the regulated activities involve the placement of fill material measuring approximately 61,248 square feet and the destruction of native vegetation.

Requirement: Pursuant to N.J.A.C. 7:7A-2.2(a), the following activities are regulated when performed in a freshwater wetland and State open waters and require prior permit approval from the Department: the removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregate material of any kind; the drainage or disturbance of the water level or water table so as to alter the existing elevation of groundwater or surface water, regardless of the duration of such alteration; the dumping, discharging, or filling with any material; the driving of pilings; the placing of obstructions, including depositing, constructing, installing or otherwise situating any obstacle which will affect the values or functions of a freshwater wetland; or the destruction of plant life which would alter the character of a freshwater wetlands, including killing vegetation by applying herbicides or by other means, the physical removal of wetland vegetation, and/or the cutting of trees; and the placement of any portion of a residential development project as defined at N.J.A.C. 7:7A-1.4 . [N.J.A.C. 7:7A-2.2(a)]

Description of Noncompliance: the performance of unauthorized regulated activities within a freshwater wetland. More specifically, the regulated activities involve the placement of fill material measuring approximately 61,248 square feet and the destruction of native vegetation.

Requirement: Pursuant to N.J.A.C. 7:7-2.3(c)4, a permit is required for any regulated activity undertaken within the upland waterfront area described therein. [N.J.A.C. 7:7-2.3(c)4]

Description of Noncompliance: the performance of unauthorized regulated activities within an upland waterfront area. More specifically, the activities involve the placement of approximately 5 acres of fill material up to 75 feet high within 500' of the mean high water line.

3. By letter dated July 30, 2002, the Department issued a Notice of Violation (NOV) to the RESPONDENTS for violations of the Waterfront Development Act (N.J.S.A. 12:5-3 and 12:5-6 et seq.) and the regulations (N.J.A.C. 7:7-2.3 et seq.).
4. On August 13, 2002, the Department received a letter from AJV Engineering Inc. (consultant) confirming that the RESPONDENTS had received the NOV dated July 30, 2002. The letter stated that the RESPONDENTS wished to offer a restoration plan, which includes ceasing any further fill material being placed on the property, and to begin the removal of all fill material down to its pre-disturbed condition. The letter also stated that due to size of the fill material, it was estimated to take approximately 6 months to complete the removal with an estimated due date of February 15, 2003.
5. On September 3, 2002, the Department received a letter dated August 27, 2002 from AJV Engineering Inc. that stated that the stockpile on the above listed property covers an area of approximately three acres. The proposed restoration plan was to remove all three acres of stockpile and return the property to pre-stockpile grade within a six-month time frame. It was further understood that no additional material was to be brought onto this property. The letter also indicated that the restoration did not prevent the owner from making an application with the NJDEP for a Waterfront Development Permit for the use of this property in the future.
6. By letter dated 24, 2002, the Department issued a response to the proposed restoration plan to AJV Engineering Inc. stating the following:
 - a. Once all fill material has been removed from the site, down to natural grade, all disturbed areas shall be stabilized with annual rye grass and straw mulch.
 - b. Based upon the time schedule proposed, the Bureau will grant the Respondents until no later than April 15, 2003 for the completion of the restoration work.
 - c. The Bureau must be notified at least 48 hours prior to commencement of the restoration work and at least 48 hours after the restoration work has been completed.
7. On May 28, 2003, a representative of the Department conducted a follow-up site inspection to determine if the restoration plan had been implemented and completed as stated by the RESPONDENTS in the August 27, 2002 letter. The site inspection revealed that no restoration work had taken place, but actually additional fill material had been placed on the above listed

property.

8. By letter dated August 18, 2003, the Department issued a second NOV to the RESPONDENTS which referenced the May 28, 2003, site inspection. The NOV advised the RESPONDENTS that the regulated activities undertaken on the site remain outstanding and require compliance.
9. On September 17, 2003, the Department received a letter from AJV Engineering Inc. responding to the second NOV. The letter stated that the RESPONDENTS would prepare an application for a Waterfront Development Permit and estimated that the Land Use Regulation Program (LURP) would receive the permit application by October 10, 2003.
10. By letter dated December 15, 2003, AJV Engineering Inc. forwarded to the Department a copy of the biannual renewal form for the Freehold Soil Conservation District, and a copy of the Waterfront Development Permit application dated December 8, 2003.
11. By letter dated December 30, 2003, the NJDEP Land Use Regulation Program responded to the Waterfront Development Permit application with a Deficiency Letter, which requests numerous issues to be addressed.
12. On March 10, 2004, a representative of the Bureau of Coastal and Land Use Compliance and Enforcement conducted a follow-up site inspection to determine if any fill material placed within a State regulated area had been removed. The fill material has not been removed, but instead a large amount of additional fill material has been placed in the State regulated area. Numerous dump trucks were observed entering the property and depositing fill thereon and exiting the property.
13. Based on the facts set forth in these FINDINGS, the Department has determined that the RESPONDENTS have violated the Freshwater Wetlands Protection Act, N.J.S.A.13:9B, and the Waterfront Development Act, N.J.S.A. 12:5-3 et seq., and the regulations promulgated pursuant thereto specifically, N.J.A.C. 7:7A-2.2(a) and 2.6(a) and N.J.A.C. 7:7-2.3(c)4 respectively.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

14. The RESPONDENTS must comply with the following:
 - a. Within 10 days of receipt of this document, the RESPONDENTS must submit a plan to remove all fill material placed within the State regulated Waterfront Development area and restore the site to its pre-disturbed condition. [N.J.S.A. 12:5]

- b. Within 10 days of receipt of this document, the RESPONDENTS must submit a restoration plan to remove all fill material from the State regulated freshwater wetland area and freshwater wetland transition area and restore the site to its pre-disturbed condition. [N.J.A.C. 7:7A-2.2 and 2.6]
15. Respondents must immediately upon receipt of this Order cease and desist from bringing any additional materials of any kind and depositing them on areas of Department jurisdiction at the site.
16. Should the Department determine that any portion of the restoration proposal submitted is inadequate or incomplete, the Department shall provide the RESPONDENTS with written comments on the restoration proposal. Within 10 calendar days of the Department's comments on the restoration proposal, the RESPONDENTS shall conform to the Department's comments and submit the revised restoration plan to the Department. The determination as to whether or not the permit application submittal and/or revised restoration proposal as resubmitted conforms to the Department's comments, shall be made solely by the Department.
17. Within 5 calendar days after receipt of the Department's final approval of the restoration proposal, the RESPONDENTS must commence the implementation of the final approved restoration plan in accordance with the approved schedule and must complete the project within the approved scheduled time period. The RESPONDENTS are required to contact the Bureau of Coastal and Land Use Compliance and Enforcement at least 48 hours prior to commencement of the work approved in the restoration plan and within 48 hours of completion of the restoration work.
18. All fill material, and any waste material generated by the restoration work must be disposed of pursuant to applicable regulations including, but not limited to the Solid Waste Management Act, N.J.S.A. 13:1E-9, the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. (the "Act"), and the Waterfront Development Act, N.J.S.A. 12:5-3 outside of any State regulated freshwater wetland, freshwater wetland transition area, and waterfront development area.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

AND

NOTICE OF RIGHT TO A HEARING

19. Pursuant to N.J.S.A. 13:9B-21 and N.J.A.C. 7:7A-17.2 et seq., and based upon the above FINDINGS, the Department has determined that a civil administrative penalty is hereby assessed against the Respondents in the amount of \$31,000.00. The Department's rationale for the civil administrative penalty is set forth in the attachment, and incorporated herein.
20. Pursuant to N.J.A.C. 7:7A-16.12, the Department may, in addition to any other civil administrative penalty assessed, include as a civil administrative penalty the economic benefit (in dollars) which a violator has realized as a result of not complying with, or by delaying compliance with, the requirements of the Act.

21. Pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A.13:9B-21(b), the RESPONDENTS are entitled to request a hearing. The Respondents shall, in its request for a hearing, complete and submit the enclosed ADMINISTRATIVE HEARING REQUEST AND CHECKLIST TRACKING FORM along with all required information. Submittal or granting of a hearing request does not stay the terms or effect of this ORDER.
22. If no request for a hearing is received within twenty (20) calendar days from receipt of this AONOCAPA, it shall become a Final Order upon the twenty-first (21st) calendar day following its receipt, and the penalty shall be due and payable.
23. If a timely request for a hearing is received, payment of the penalty is due when the RESPONDENTS receives a notice of the denial of the request, or, if the hearing request is granted, when the RESPONDENTS withdraws the request or abandons the hearing, or, if the hearing is conducted, when the RESPONDENTS receives a final decision from the Commissioner in this matter.
24. Payment shall be made by check payable to Treasurer, State of New Jersey and shall be submitted along with the enclosed Enforcement Invoice to:

Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, NJ 08646-0417

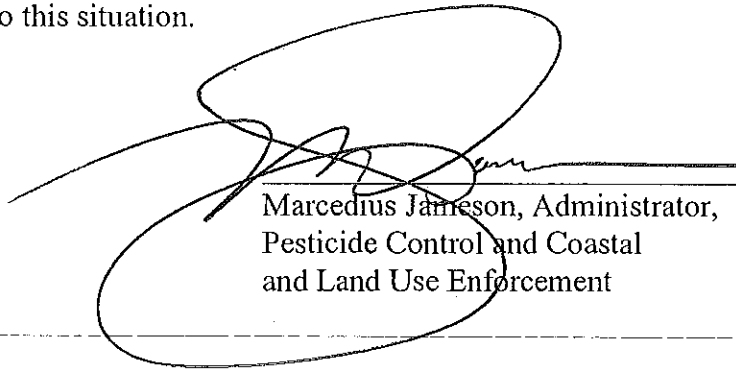
GENERAL PROVISIONS

25. This AONOCAPA is binding on the RESPONDENTS, their principals, directors, officers, agents, successors, assigns, employees, tenants, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.
26. No obligations imposed by this AONOCAPA are intended to constitute a debt, which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare and the environment.
27. This AONOCAPA is issued only for the violation(s) identified in the FINDINGS herein above and that violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted. By issuing this AONOCAPA, NJDEP does not waive its rights to initiate additional enforcement actions.
28. Neither the issuance of this AONOCAPA nor anything contained herein shall relieve the RESPONDENTS of the obligation to comply with all applicable laws, including but not limited to the statutes and regulations cited herein.
29. Pursuant to N.J.A.C. 7:7A-15.6, any person who violates the provisions of the Act, or any code,

rule regulation or order promulgated or issued pursuant thereto, or who fails to pay a civil administrative penalty in full, shall be subject, upon order of the court, to a civil penalty not to exceed \$10,000 per day. Each day during which the violation continues constitutes an additional, separate and distinct offense.

30. Pursuant to N.J.S.A.13:9B-21(f), any person who willingly or negligently violates the provisions of the Act, or any code, rule, regulation, administrative order or court order, promulgated or issued pursuant thereto, is guilty of a crime of the fourth degree.
31. This Order shall not be construed to contradict or conflict with other Orders issued by the Department in regards to this situation.

DATE: 5/17/04



Marcedius Jameson, Administrator,
Pesticide Control and Coastal
and Land Use Enforcement

**Administrative Hearing Request Checklist
and Tracking Form**

I. Document Being Appealed: **EA ID # PEA040001 - 1225-02-0020.1**

Date Document Issued

II. Person Requesting Hearing:

Name/Company

Name of Attorney (if applicable)

Address

Address

Telephone #

Telephone #

III. Please Include the Following Information As Part of Your Request:

- A. ~~The date the alleged violator received the Enforcement Document.~~
B. A copy of the **Enforcement Document** and a list of all issues being appealed.
C. An admission or denial of each of the findings of fact, or a statement of insufficient knowledge;
D. The defenses to each of the findings of fact in the enforcement document;
E. Information supporting the request;
F. An estimate of the time required for the hearing;
G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
I. This form, completed, signed and dated with all of the information listed above, including attachment, to:

1. New Jersey Department of Environmental Protection
Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
401 E. State Street, P.O. Box 402
Trenton, New Jersey 08625
2. Barbara Baus, Supervisor
Coastal and Land Use Compliance and Enforcement
PO Box 422
Trenton, NJ 08625-0422

IV. Signature: _____ Date: _____

WATERFRONT DEVELOPMENT PENALTY RATIONALE

In The Matter Of: Spector Woodbridge, DC Trucking, Tom Giordano, and Donna Giordano
Individually
File #1225-02-0020.1

In accordance with the Waterfront Development Statute N.J.S.A. 12:5-3 et seq., the Commissioner of the New Jersey Department of Environmental Protection (NJDEP) is authorized to assess an administrative penalty of not more \$1,000 for each violation of the Statute, and is authorized to assess additional penalties of not more than \$100 for each day during which this violation continues after receipt of an administrative order.

Each separate structure being constructed or dredging occurring without the benefit of the necessary occupational instrument and/or permit can be considered a separate violation and as such can be assessed a separate penalty.

On July 2, 2002, May 28, 2003, and March 22, 2004, inspections were conducted by personnel from the NJDEP, Bureau of Coastal & Land Use Compliance and Enforcement, revealed that Respondents did violate the Waterfront Development Statute by placing large amounts of fill material within the waterfront area as defined in New Jersey Administrative Code (N.J.A.C.) 7:7-2.3(a) pursuant to paragraphs above.

The following matrix is employed to determine each penalty under the Waterfront Development Statute and Rule pursuant to N.J.A.C. 7:7-8.8:

SERIOUSNESS				
C O N D U C T		MAJOR	MODERATE	MINOR
	MAJOR	\$1,000	\$900	\$750
	MODERATE	\$900	\$700	\$500
	MINOR	\$750	\$500	\$250

Seriousness of the violation is assessed as follows:

- MINOR: 4 or fewer pilings
- MODERATE: docks 100 square feet or less, breakwaters 40 linear feet or less, or other similar structures
- MAJOR: all other structures or activities: or those violations defined as minor or moderate which have a permanent adverse effect on a special area as defined in NJAC 7:7E-3

Conduct of the violator is assessed as follows:

- MAJOR: any intentional, deliberate, purposeful, knowing or willful act or omission by the violator
-
- MODERATE: any unintentional but foreseeable act or omission by the violator
- MINOR: any other conduct not included as major or moderate

Based upon the above matrix, the Department has determined the conduct to be **MAJOR** and the seriousness of the violation to be **MAJOR**. Given this determination and the following penalty adjustment factors: The Respondents, after being issued 2 separate Notices of Violations (NOV) dated July 30, 2002 and August 18, 2003, continued to place fill material within a State regulated Waterfront Development Area. Therefore, a penalty is being assessed in the amount of \$ 1,000.00.

FRESHWATER WETLAND PROTECTION ACT PENALTY ASSESSMENT RATIONALE

“The Legislature of New Jersey has found and declared that freshwater wetlands protect and preserve drinking water supplies by serving to purify surface water and groundwater resources; that freshwater wetlands provide a natural means of flood and storm damage protection, and thereby prevent the loss of life and property through the absorption and storage of water during high runoff periods and the reduction of flood crests; that freshwater wetlands serve as a transition zone between dry land and water courses, thereby retarding soil erosion; that freshwater wetlands provide essential breeding, spawning, nesting, and wintering habitats for a major portion of the State’s fish and wildlife, including migrating birds, endangered species, and commercially and recreationally important wildlife; and that freshwater wetlands maintain a critical baseflow to surface waters through the gradual release of stored flood waters and groundwater, particularly during drought periods.”

"The Legislature therefore determines that in this State, where pressures for commercial and residential development define the pace and pattern of land use, it is in the public interest to establish a program for the systematic review of activities in and around freshwater wetland areas designed to provide predictability in the protection of freshwater wetlands; that it shall be the policy of the State to preserve the purity and integrity of freshwater wetlands from random, unnecessary or undesirable alteration or disturbance"

The Superior Court, Appellate Court of New Jersey has stated that:

"Consequently, the DEP's role in enforcing its regulations under the FWPA and CAFRA is daunting. It must be diligent in preventing the yard-by-yard destruction of environmentally sensitive land. "{L}and itself is a diminishing resource...and environmentally-sensitive land is all the more precious. Hence, a proposed development that my constitute only a small insult to the environment does not lessen the need to avoid such an offense." Gardner, supra, 125 N.J. at 208. Thus, the State's strong interest in protecting wetlands and preserving coastal areas must be fundamental... ."

By conducting the activities described in the findings of this Order such as extensively filling an area containing regulated land types prior to seeking the Department's review and approval via the required permitting process, the Respondents have deprived the Department of their mandated role in the protection of sensitive and diminishing land types such as the freshwater wetland areas that exist on this property.

Inspections and investigation, as detailed in the FINDINGS of the AONOCAPA, have revealed that unauthorized regulated activities had occurred within freshwater wetlands. The violations involve the placement of fill material within wetlands and transition areas on the site.

Penalty Calculation for Activities Conducted within a State Regulated Freshwater Wetland and Freshwater Wetland Transition Area:

Bureau File # 1225-02-0020.1

Block 531B, Lot 100 – Woodbridge Township – Middlesex County

PENALTY CALCULATIONS

1. Quality of freshwater wetland (resource value):
(Ordinary) (Intermediate) (Exceptional)

1 pt. 2 pt. 3 pt.

2 Points

2. Conduct of violator:

Minor - Shall include any conduct not identified as Major or Moderate - 1 pt.

Moderate - Shall include any unintentional but foreseeable act or omission - 2 pt.

Major - Shall include intentional, deliberate, purposeful, knowing or willful act or omission - 3 pt.

3 Points

The Bureau has determined the Respondents' conduct to be **Major** due to the fact that additional violations were observed at the property after the issuance of the first NOV dated July 30, 2002, and even after the issuance of a second NOV dated August 18, 2003, although not for the freshwater wetlands component of this Order. The Bureau received correspondence from the Respondents dated August 27, 2002, which stated at that time that the stockpile of fill material measured approximately 3 acres and would be removed down to original grade. The Respondents also stated that no additional fill material would be brought onto the property. Through additional site inspections, it has been determined that additional fill material has been brought onto the property, and now measures approximately 5 acres in size. Although the total area of the fill material stockpile measures approximately 5 acres, the disturbance in a State regulated freshwater wetland and freshwater wetland transition area measures at least 1.3 acres (61,248 sq. ft.), the exact scope of which must be determined precisely via a Letter of Interpretation prior to the matter being resolved.

3. Acreage of freshwater wetland disturbance:

(Less than 1 acre - 1 pt.)

(1 to 3 acres - 2 pt.)

(Greater than 3 acres - 3 pt.)

2 Point

Total Points: 7

The total number of points is 7 and the amount of penalty per day utilizing the Assessment Table below (from Table D, at N.J.A.C. 7:7A-16.8), is calculated at \$ 7,500.00

PENALTY ASSESSMENT TABLE	
Total Points	Penalty Amount
9	\$10,000
8	\$ 9,000
7	\$ 7,500
6	\$ 6,000
5	\$ 4,500
4	\$ 3,000
3	\$ 1,500

Pursuant to N.J.A.C. 7:7A-15.6, any person who violates the provisions of the Act, or any code, rule, regulation or order promulgated or issued pursuant thereto, or who fails to pay a civil administrative penalty in full, shall be subject, upon order of the court, to a civil penalty not to exceed \$10,000 per day. Each day during which the violation continues constitutes an additional, separate and distinct offense.

As this AONOCAPA documents, many days have elapsed and many unpermitted regulated activities were undertaken and/or have not been restored as requested by the Department since the original violation was observed and guidance given upon inspection of the site on June 14, 2001. No restoration of the site has occurred. Although the Department afforded the Respondents the opportunity to apply to legalize certain activities that had been performed without authorization on the site, some activities were identified immediately as being unpermissible and have heretofore not been restored as required and in any case, the activities identified herein have occurred prior to the receipt of Department authorization, or even the submission of an acceptable application to gain such approval.

As a full penalty assessment of daily penalties since July 2, 2002 would yield an unreasonable penalty amount, the Department is using its discretion to assess 4 days of violation.

Therefore the total penalty shall be 4 DAYS@ \$7,500.00 per day = **\$30,000.00** total penalty assessment for violations committed under the Freshwater Wetland Protections Act.

The Department shall continue to assess additional penalties until Respondents have fully complied with all requirements of this AONOCAPA.

Total Penalty ...

Which includes Waterfront Development Area violations of \$1,000.00 plus Freshwater Wetlands/Freshwater Wetland Transition Area violations of \$30,000.00 totaling **\$31,000.00**.

I

08/10/2004 11:00

17326342026

D C TRUCKING

PAGE 12

LWS/SPECTOR WOODBRIDGE CO. LLC, WILLIAM SPECTOR Individually, DC TRUCKING CORPORATION, THOMAS GIORDANO Individually, and DONNA GIORDANO Individually
Administrative Order and Notice of Civil Administrative Penalty
Page 15 of 15

Administrative Hearing Request Checklist
and Tracking Form

I. Document Being Appealed: EA ID # PEA040001 - 1225-02-0020.1

8/5/04

Date Document Issued

II. Person Requesting Hearing:

LWS/SPECTOR WOODBRIDGE CO., LLC.NONE

Name/Company

Name of Attorney (if applicable)

WILLIAM SPECTOR Individually156 Second St, PO Box 29, Perth Amboy, NJ

Address

08862

Address

732-442-6990

Telephone #

Telephone #

III. Please Include the Following Information As Part of Your Request:

- A. The date the alleged violator received the Enforcement Document.
- B. A copy of the Enforcement Document and a list of all issues being appealed.
- C. An admission or denial of each of the findings of fact, or a statement of insufficient knowledge;
- D. The defenses to each of the findings of fact in the enforcement document;
- E. Information supporting the request;
- F. An estimate of the time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed and dated with all of the information listed above, including attachment, to:

1. New Jersey Department of Environmental Protection
Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
401 E. State Street, P.O. Box 402
Trenton, New Jersey 08625

2. Barbara Baus, Supervisor
Coastal and Land Use Compliance and Enforcement
PO Box 422
Trenton, NJ 08625-0422

IV. Signature: [Signature]

Date: 8/25/04

LWS/SPECTOR WOODBRIDGE CO. LLC, WILLIAM SPECTOR Individually
PO BOX 29
PERTH AMBOY, NJ 08865

Administrative Hearing Request Checklist & Tracking Form response:

Document: EA ID # PEA040001-1225-02-0020.1

The following are the responses to part III.

- A. August 12, 2004
- B. See Attached
- C. We deny all allegations against LWS/SPECTOR WOODBRIDGE CO. LLC, WILLIAM SPECTOR Individually.
- D. We did not operate the site, we did not encroach on wetlands and we did not encroach on the waterfront development zone.
- E. We request the hearing in order to support our denials.
- F. 1 (One) week or less.
- G. Not Applicable.
- H. Yes, willing to negotiate a settlement.
- I. See Attached.

SENT VIA CERTIFIED MAIL TO:

NJDEP: 7003 1680 0004 0509 0845

Coastal & Land Use Compliance: 7003 1680 0004 0509 0852