



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
April 15, 2010

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General found that Charles T. Hamilton, former Regional Natural Resources Supervisor for the New York State Department of Environmental Conservation (DEC), engaged in conduct which may have violated the state's ethics guidelines.¹ Specifically, in connection with his volunteer position as coordinator of the New York Wildfire and Incident Management Academy (Wildfire Academy), Hamilton personally arranged for homeowners in the Incorporated Village of West Hampton Dunes,² a locale heavily regulated by DEC and within the scope of his supervisory responsibility, to donate the free use of their homes to house instructors during training periods.

The Inspector General recommended that DEC take appropriate disciplinary action against Hamilton regarding the use of private homes to house instructors from the Wildfire Academy. Furthermore, DEC should review those permit applications with which Hamilton had been involved relating to West Hampton Dunes to assure the propriety of their issuance. In addition, the Inspector General has forwarded a copy of this report to the New York State Commission on Public Integrity for further action regarding Hamilton's apparent violation of the state Public Officers Law.

The Inspector General further recommended that DEC prioritize the processing of the application for renewal/extension of the permit previously issued to the Barrier Beach Preservation Association, Inc. (BBPA), in addition to its determination about whether a tidal wetlands violation exists upon the BBPA's property. DEC should also ascertain whether there exist other permit applications which have languished without timely decisions having been made and take all necessary action to process any such applications. Similarly, DEC should ascertain whether it is in possession of evidence of

¹ Specifically, Hamilton's actions may violate New York State Public Officers Law § 74(3)(h) which provides that "an officer or employee of a state agency...should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust." Interpreting this section, the New York State Commission on Public Integrity (formerly the Ethics Commission) has long held that a public servant's "actions and affiliations must be above reproach" even if no conflict of interest exists. Public employees should not take part in any associations that give the appearance of favoritism or private gain, or which "shake the public's confidence."

² The Incorporated Village of West Hampton Dunes is located in Suffolk County.

tidal wetlands violations which have not been acted upon, and to take all required actions with regard thereto.

ALLEGATION

In October 2007, the Inspector General received a complaint from Gary A. Vegliante, who has been the mayor of West Hampton Dunes since 1993, alleging improper conduct on the part of DEC employee Charles T. Hamilton and the DEC Division of Fish, Wildlife & Marine Resources, Region One. According to Vegliante, in November 2005, after purchasing a new home on Cove Lane in West Hampton Dunes near his former residence, he approached Hamilton for his expertise regarding a proposed building project for the new home. Around that same time, Vegliante alleges, he informed Hamilton that, unlike his former residence, this new residence would not be made available to house instructors of the Wildfire Academy. According to Vegliante, Hamilton's demeanor then changed drastically and their relationship soured.³

Vegliante, in his complaint to the Inspector General, related that he and his wife Claire had purchased subdivided property located at 774 Dune Road in West Hampton Dunes, in 2003 "complete with all permits (DEC, Board of Health, etc.) ready to build" and later entered into a joint venture agreement to build a home there for resale. Vegliante alleged that, in retaliation for the discontinued availability of his residence for instructors of the Wildfire Academy, Hamilton failed to issue a tidal wetlands permit to him for this subdivided property and, through an assortment of threats and intimidations, Hamilton apparently revoked, or attempted to revoke, Vegliante's valid DEC permit.

Additionally, Vegliante contends that, in 2006, Hamilton and DEC Region One caused the Town of Southampton to commence a lawsuit regarding the ownership of the land on Dune Road, in direct conflict with (and possibly in contempt of) a federal district court order and that Hamilton disingenuously raised this issue of questionable land ownership as a pretext to withhold Vegliante's permit in retaliation for the discontinued use of his residence for instructors of the Wildfire Academy.

In September, 2009, Vegliante lodged an additional complaint with the Inspector General, alleging that Hamilton was still reviewing permits notwithstanding DEC representations to the contrary; that Hamilton had caused DEC to deny an application for the renewal of a permit submitted by the Barrier Beach Preservation Association; and that DEC had wrongfully caused the issuance of a Notice of Violation to the Village of West Hampton Dunes and may have done so in retaliation for his prior complaints to the Inspector General.

³ For the prior seven or more years, Vegliante had donated the use of his prior home at no cost to the Wildfire Academy or its participants.

SUMMARY OF INVESTIGATION

Background

Under the Tidal Wetlands Act (the Act),⁴ DEC administers a permit program regulating activities in tidal wetlands and their adjacent areas. In general, tidal wetlands consist of all the salt marshes, flats and shorelines subject to tides. Certain activities can adversely affect, and in some cases destroy, the delicate ecological balance of these important areas. It is therefore the policy of New York State, as set forth in the Act, to preserve and protect the wetlands. To implement this policy, DEC administers the Tidal Wetlands Regulatory Program (the Program) which is designed to prevent the despoliation and destruction of tidal wetlands by establishing and enforcing regulations designed to preserve, protect, and enhance the present and potential values of tidal wetlands; to protect the public health and welfare; and, to give due consideration to the reasonable economic and social development of the state.

DEC requires a permit for almost any activity which will alter wetlands or the adjacent areas, including the subdivision of land. Hamilton, who has been employed by DEC since November 10, 1977, was, at all times relevant to this investigation, employed as a Regional Natural Resources Supervisor in Region One, which is comprised of Nassau and Suffolk counties on Long Island. His duties included conducting investigations regarding applications for tidal wetlands permits under the Program, as well as issuing such permits. However, effective September 2, 2008, Hamilton has been employed as an Assistant Emergency Response Coordinator in DEC's Office of Public Protection. He has, for many years, also served in the volunteer position of academy coordinator of the Wildfire Academy, which DEC conducts along with other government agencies to provide training related to fire management.

In 1992 and 1993, storms destroyed many homes in an area which in 1993 became the Incorporated Village of West Hampton Dunes.⁵ In August 1999 in settlement of litigation (*Rapf et ano v. Suffolk County of New York*), DEC issued an Article 25 Tidal Wetlands permit to West Hampton Dunes pursuant to the Environmental Conservation Law. The *Rapf* "Stipulation of Settlement and Consent Judgment" provided for the following:

[D]elivery by DEC to the Village of a General Permit, with appropriate conditions standard to such permits, allowing the building, rebuilding or repair of structures in the Damage Area substantially within the same footprint as, and with no greater ground area coverage than, existed prior to the damage or loss; and, in the case of a lot on which there never had

⁴ Environmental Conservation Law Article 25, §§ 25-0101 et seq.

⁵ The storms also deposited millions of tons of sand upon land that had been at the bottom of Moriches Bay, thereby adding land to many of the properties on Dune Road. In the case of the property located at 774 Dune Road, the length of the property increased northward from Dune Road from approximately 175 feet to approximately 800 feet.

been a structure, allowing the building of a structure in compliance with the Tidal Wetlands Act and other applicable laws and regulations.

The permit's "special conditions" require that any landowner who desires to utilize it must submit a building application and plot plan/survey to the West Hampton Dunes Building Department. The chief building inspector is required to review the application to insure that the project meets the general permit requirements, and then forward it to now former DEC Regional Natural Resources Supervisor Charles T. Hamilton. Upon commencement and completion of the project, notices must be furnished to DEC.

The Donated Use of Private Homes Within West Hampton Dunes

According to DEC's Web site, the New York Wildfire and Incident Management Academy was founded in 1998 with the goal of providing a safe learning environment for Wildland Firefighters and Incident Managers and to foster greater networking opportunities and partnerships between participants from federal, state and local agencies.

According to Hamilton, from 1998 until 2005, various officials of West Hampton Dunes provided free housing accommodations in their private residences to Wildfire Academy staff members, for periods of approximately seven to ten days each year. The officials included Commissioner of Highways James O'Rourke, Building Inspector Herbert Hoffman, Trustee Robert Strecker, Trustee George Asem, and Mayor Gary Vegliante. Hamilton noted that the Wildfire Academy also received, for example, the donated use of camp sites, classrooms and fire engines from a variety of participating agencies. He further noted that the motto of the Wildfire Academy is "Quality Training Through Interagency Cooperation," and that the "free services, equipment, houses, classrooms, and land-use provided," constituted "Government working together for a common goal of Wildland Fire and Incident Management education."

Hamilton contends that "[e]veryone knew about the Village of West Hampton Dune[s] house donations by their public officials" and that it was "open and transparent." Yet, when interviewed by the Inspector General, Hamilton's supervisor, Region One Director Peter Scully who has been employed in this position since 2003, denied having had any knowledge concerning the use of the private homes in West Hampton Dunes. His predecessor, Ray Cowen, similarly reported that he could not recall the instructors using private homes. Cowen believed that they were housed at Brookhaven National Laboratories, where the classes were held, and that some had actually set up a campsite on the facility.

Vegliante related to the Inspector General that it had been Trustee Strecker, who was friendly with Hamilton, who had suggested to Vegliante that it would be in their best interest if some residents would consent to the use of their homes for Wildfire Academy instructors during the off-season. In response to the Inspector General's inquiry as to whether there existed a "quid pro quo" concerning the free use of homes and Hamilton's

regulatory enforcement duties particularly with respect to permits, Vegliante replied that although it was never clearly stated, it was most definitely implied.

During the period in which homes were used by the Wildfire Academy instructors, according to DEC records, DEC had issued permits or permit amendments to two West Hampton Dunes trustees who had donated their homes. In addition, Building Inspector Hoffman, who also provided his home, was, pursuant to the terms of the general permit, required to review all applications prior to their submission to Hamilton at DEC. Vegliante stated that after he had informed Hamilton that his new home on Cove Lane would not be available to house the instructors, Hamilton's demeanor changed drastically and their relationship soured. It was again Strecker, Vegliante related, who then recommended that the other residences also not be made available due to the situation "getting out of hand."⁶ When interviewed by the Inspector General, Hamilton denied that a conversation with Vegliante about the new house on Cove Lane had ever occurred.

Hamilton contends that the free use of the homes of West Hampton Dunes officials was no different from the contributions made by other public entities to the Wildfire Academy, (e.g., fire engines from the U.S. Fish and Wildlife Service). Clearly, however, the contributions made by these officials were of a different character than those made by the public agencies participating in the Wildfire Academy. Given Hamilton's official position and his involvement in matters directly affecting the West Hampton Dunes, a reasonable person could question the true nature of their "volunteering." Indeed, that Mayor Vegliante has even raised the possibility of a link between his withdrawal of the use of his home and purported retaliatory actions taken by Hamilton highlights the necessity of avoiding all associations which might lend themselves to misconstruction. Although Hamilton adamantly denies any wrongdoing in his dealings with West Hampton Dunes, the use of the private homes, at a minimum, reflects poor judgment. As a New York State employee and particularly as a supervisor in an agency with regulatory responsibilities, even the "mere appearance" of impropriety must be avoided.

Tidal Wetlands Permits pertaining to 774 Dune Road in West Hampton Dunes

On April 10, 2002, Enrico Scarda, a friend of Vegliante, purchased the property located at 774 Dune Road. Thereafter, Scarda submitted a plan to Building Inspector Hoffman, as required under the general permit, to build a second home on the property.⁷ Hoffman approved the plan as conforming to the general permit and forwarded it to Hamilton for DEC's records. On November 15, 2002, Hamilton issued a non-mandatory

⁶The instructors are now housed on site at Brookhaven National Laboratory, where the Wildfire Academy holds its classes.

⁷ The Scarda application was prepared by First Coastal Corporation, a consulting company operated by Aram Terchunian, who is also employed as the West Hampton Dunes Commissioner of Wildlife Protection. The application was approved by Building Inspector Hoffman, a member of the same governmental office as Terchunian. In point of fact, the governmental offices and First Coastal are located in the same building on property owned by Terchunian.

concurrency letter. Scarda, however, never commenced construction of a second home on the property; rather, he petitioned the West Hampton Dunes board of trustees to subdivide the property, which he subsequently sold.⁸

On March 18, 2003, the board of trustees, in a document entitled “Findings, Determination and Decision” and signed by Vegliante in his capacity as mayor, approved Scarda’s application to subdivide the property at 774 Dune Road into two lots. Thereafter, on May 28, 2004, Vegliante and his wife⁹ purchased the larger of the two lots of the subdivided property at 774 Dune Road.¹⁰

It is DEC’s position that the general permit does not authorize the subdivision of land and, therefore, a tidal wetlands permit would have been required to subdivide 774 Dune Road. While in 2002 Scarda had sought and obtained approval under the general permit for a second dwelling on 774 Dune Road, his proposal did not include the subdivision of the parcel into two single and separate lots. According to DEC records, no tidal wetlands permit application to subdivide 774 Dune Road has ever been received. Although Vegliante continues to contend that Scarda had already subdivided the property and that Hamilton was aware of the subdivision prior to issuing the “permit” to build the second home on the subdivided lot, his contention is belied by the documents he himself furnished to the Inspector General. It was similarly contradicted by the statement given by Aram Terchunian, to the effect that an application had been submitted to DEC by Scarda to construct a second residence at 774 Dune Road under the general permit prior to his subdivision of the property.

Although as of September 23, 2005, Scarda no longer owned the property, DEC issued a Notice of Violation to him dated July 27, 2006, for having caused, or permitted to be caused, the subdivision of a single lot into two separate lots without the required DEC permit. A compliance conference regarding the Notice of Violation was held on October 5, 2006, attended by Hamilton, Scarda and Vegliante, among others. As of the Inspector General’s investigation, DEC had still not enforced the Notice of Violation, and according to DEC, no further action is contemplated.

After the compliance conference, according to Hamilton, on October 31, 2006, he received a telephone call from Building Inspector Hoffman, seeking a permit for Vegliante. Hamilton advised him that a permit could not be issued because of the subdivision violation. Hamilton stated that Hoffman then put Vegliante on the telephone, who suggested that he could use Scarda’s approval to build a second home on the property. Hamilton stated he advised Vegliante that, because permits were owner-specific and not land-specific, the approval issued to Scarda was no longer viable.

⁸ When interviewed by the Inspector General, Terchunian stated that he had reviewed the subdivision application submitted by Scarda on behalf of the Village of West Hampton Dunes.

⁹ According to published reports, in 1993 Vegliante appointed his wife under her maiden name, Claire Tevere, as West Hampton Dunes Treasurer, a position she still holds to date.

¹⁰ When interviewed by the Inspector General, Vegliante stated that he and his wife purchased the property from Scarda under a limited liability corporation and later transferred the property to Claire Vegliante to facilitate obtaining a loan. In his complaint to the Inspector General, Vegliante specified that the purchase of the subdivided property took place in 2003; however, according to Suffolk County property records, the Scarda transfer to the LLC occurred on May 28, 2004.

Having been apprised of the impossibility of using Scarda's November 15, 2002 concurrence letter, Vegliante, when interviewed by the Inspector General, still maintained that he never applied for a DEC tidal wetlands permit because the existing permit issued to Scarda was valid as to the property. Specifically, Vegliante asserted that Hamilton's letter to Scarda allowing for the construction of a second house at 774 Dune Road prior to the subdivision indicates that a second house would not violate any DEC tidal wetlands policies, irrespective of whether the property consists of one lot or two lots. Vegliante also noted that Hamilton based his approval for the construction of a second house and the issuance of the permit on two previous certificates of occupancy for the property (one for the main house and one for a garage/guesthouse). Vegliante did, however, acknowledge that Scarda had subdivided the property without notification to or permission from DEC. In any event, Vegliante asserted to the Inspector General that under the terms of the *Rapf* agreement, he didn't even need a permit from DEC to build upon the property.

In response to the Inspector General's inquiry regarding the "permit" issued to Scarda, DEC clarified that it had not issued any permit other than the general permit issued to West Hampton Dunes and that the November 15, 2002 letter from Hamilton to Scarda was a statement of concurrence and not technically a "permit." And, according to DEC Region One Attorney Vernon G. Rail, a DEC concurrence was not even a requirement of the general permit. Thus, while Vegliante's complaint letter to the Inspector General that prompted the instant investigation claimed that Hamilton was withholding, or had threatened to deny, approval of a permit, Hamilton's approval would not have even been required had Vegliante submitted plans to the building inspector which conformed to the terms of the general permit.¹¹ Vegliante conceded as much after the Inspector General was well within the course of this investigation. Furthermore, it is undisputed that Vegliante has never applied to DEC for any tidal wetlands permit to build on the subdivided land. In view of this concession and the lack of any application to DEC requiring action on Hamilton's part, Vegliante's allegation of retaliation to the Inspector General is and was patently without merit.

After the Inspector General initiated the instant investigation, Hamilton offered that the November 15, 2002 concurrence letter issued to Scarda, pursuant to the general permit and authorizing the construction of a second dwelling, had been premised upon erroneous information submitted by Scarda as to whether there had ever been a second dwelling upon the property prior to the 1992/1993 storms.¹² Hamilton provided official contemporaneous documentation to the Inspector General in support of revocation of the Scarda concurrence. He cited a Certificate of Occupancy Report, submitted by Building Inspector Hoffman, which indicated that a Certificate of Occupancy had been issued on July 14, 1988, for a one-family dwelling. Also furnished were copies of applications for

¹¹ According to DEC records, no notification from Hoffman was ever received regarding the approval of any plans submitted by the Vegliantes as required under the general permit.

¹² The special conditions of the general permit require that "such repaired or rebuilt structures shall be within substantially the same footprint as the pre-existing structures," and, "[o]n lots on which no structure existed prior to October 31, 1994, Permittee is authorized by this general permit to construct dwellings that comply with local zoning setbacks."

DEC permits relating to 774 Dune Road over a nearly 40-year period, in addition to aerial photographs, which led him to recently conclude that “there was never a legal second house at 774 Dune Road.”

During the time period when the donated use of the homes was ongoing, Hamilton, who by all accounts has great expertise in tidal wetlands regulation, issued the November 2002 concurrence letter to Scarda seemingly without regard to the then-readily ascertainable facts which he now maintains demonstrate cause for revocation of the concurrence. While not germane to the allegations of this investigation, the Inspector General recommends that DEC investigate the circumstances surrounding Scarda’s application under the general permit and whether there had been any impropriety on the part of the applicant, Hoffman or Hamilton.

DEC’s notification to the Town of Southampton

Another Vegliante allegation of retaliation by Hamilton found to be unsubstantiated relates to a letter dated February 1, 2006, from DEC Region One Marine Biologist Matthew Richards to the Town of Southampton Board of Trustees. The letter, which Vegliante contends was “ordered” by Hamilton, advised the Town that recent inspections for DEC tidal wetlands permit applications for properties located at 772 and 776 Dune Road in West Hampton Beach had revealed that private individuals appeared to be claiming Town land as their own.¹³

The letter also cited Vegliante’s property located at 774 Dune Road and noted that it had already been subdivided with no attempt to obtain a permit from DEC, and thus there exists “an un-permitted subdivision, which is a violation of Article 25 of the ECL.”¹⁴ Richards further advised that DEC was apprising the Town of this situation as it may be a violation of Town law. Lastly, DEC requested the Town’s recommendations or concerns regarding the two tidal wetlands applications to subdivide the properties adjacent to that of Vegliante.

Thereafter, in or about October 2006, an action entitled *Scott Strough, et al., v. Incorporated Village of West Hampton Dunes, et al.*, was commenced in Supreme Court, Suffolk County, alleging, among other things, that as a result of the 1992-1993 storms, millions of tons of sand and earth were deposited into Moriches Bay upon plaintiffs’

¹³ During the Inspector General’s investigation, Hamilton acknowledged having similarly brought this matter to the Town’s attention.

¹⁴ In order to determine whether Hamilton or DEC engaged in any retaliatory actions relating to the subdivided property at 774 Dune Road, the Inspector General examined applications to subdivide other Dune Road properties. According to Regional Director Scully, in 2004, DEC received two permit applications to subdivide the properties at 772 and 776 Dune Road into two lots each and build dwellings. It is DEC’s position that most of the land at issue had been created as a result of the aforementioned storms and the resulting formation of an inlet. DEC’s tidal wetlands maps show this area as previously being underwater and constituting shoals and mudflats, and, according to DEC, such areas may not be developed with structures such as dwellings, septic systems and driveways. DEC, therefore, in February 2007 advised the two applicants that subdividing their land does not appear to meet the regulatory standard for permit issuance. For these reasons, and because of the lawsuit brought by the Town, DEC considers the two permit applications to be incomplete pending resolution of the lawsuit.

lands (“the disputed lands”), and that the defendants (including Mayor Vegliante in his official capacity, and Claire Vegliante, his wife, individually) intended to develop the disputed lands without regard to the ownership thereof. The lawsuit, which names more than 30 defendants, is still pending. That the notice to the Town was furnished by DEC after Vegliante informed Hamilton that the free use of his home would no longer be available, does not establish a causal connection between the two events, let alone support a claim of retaliation.

Vegliante also asserted that the letter is in direct conflict with, and possibly in contempt of, of a federal court order. In support of this contention, Vegliante furnished to the Inspector General a document bearing the caption *Rapf et ano v. Suffolk County of New York*, and entitled “Supplement to Stipulation of Settlement and Consent Judgment Dated October 31, 1994.” The stipulation sets forth, in pertinent part:

The State of New York makes no claim and will not make any claim of title to any property north of the southern edge of the Dune Road right of way in the Damage Area, as further described in said Stipulation, based on the ground that the State of New York may have acquired such property by reason of the submergence of any of said properties during the period December 2, 1992, to and through December 1, 1993.

Contrary to Vegliante’s assertion, this language does not appear to proscribe DEC’s notice to the Town. Nevertheless, even if DEC’s notification to the Town did, in fact, violate this stipulation, the federal district court would be the appropriate forum to determine whether a contempt has occurred.

Hamilton’s Review of Permits

In September 2009, Vegliante complained to the Inspector General that although he had been assured by a DEC official that Hamilton was no longer reviewing permit applications, Hamilton had recently testified under oath at a DEC administrative hearing that he was, in fact, continuing to review permits. The Inspector General obtained and reviewed testimony given by Hamilton at a DEC hearing held on September 9, 2009, at which Hamilton testified that since August 2008, he has worked “with tidal wetlands issues at some projects that the Department is working on that I am managing the implementation and planning and development of marine access sites in the region...” He further testified that he was, at that time, reviewing applications submitted by governmental institutions rather than private individuals.

When interviewed by the Inspector General in October 2009, Hamilton reported that he had filed a grievance, without success, to challenge DEC’s removal of most of his prior duties and responsibilities. He also stated though, that he still retained his designation as a Deputy Permit Administrator. Regional Director Scully confirmed this fact, but also mentioned, however, that the Chief Permit Administrator had recently recommended that Hamilton’s authorization to issue and modify permits be rescinded.

Thus, while Vegliante accurately alleged that in September 2009 Hamilton had testified that he was still reviewing DEC permits, the Inspector General determined that such circumstance does not violate any DEC policy or directive.

The Application for Renewal/Extension of a Permit Previously Issued by DEC to the Barrier Beach Preservation Association, Inc. (BPPA)

On February 24, 2003, DEC issued a permit to the BPPA, with an expiration date of February 28, 2008. It included individual approvals for tidal wetlands, excavation and fill in navigable waters, and water quality certification. According to Regional Director Scully, the permit did not authorize the placement of clean fill at the project site.

In a letter dated January 8, 2008, BBPA's representative, First Coastal by Aram Terchunian, requested that the permit be extended past its original expiration date, with the scope of the project to remain unchanged.¹⁵ The technical review for the renewal/extension request was undertaken by Matthew Richards, Biologist 1 in the Bureau of Marine Habitat Protection. On March 6, 2008, Richards generated a five-page memorandum to the Division of Environmental Permits, which stated, in relevant part, that: "This project is not compatible with the public health and welfare, does not meet the developmental restrictions, and is not compatible with the policy to preserve tidal wetlands and their values."

The Richards memo further asserted that conditions at the site "differed significantly from the conditions shown on the project plans", and also appeared to raise questions about the project generally which were not raised in the initial review of the project. These questions included delineation of property lines, lack of lot coverage calculations, and lack of other details on the project plans which had been approved by DEC in conjunction with the issuance of the initial permit. The disparities and apparent inconsistencies between the results of the two technical reviews were not explained. Moreover, handwritten notes affixed to the Richards memo, which were generated by Hamilton on or about March 31, 2008, suggest strategies to address the application's inadequacies or to justify denial of the permit renewal/extension request. Roger Evans, the Regional Permit Administrator, noted in a memo dated May 8, 2008, that a denial would be a reversal of the originally permitted project, but took no further action relative to the request for renewal/extension.

When interviewed by the Inspector General in October 2009, Aram Terchunian related that subsequent to the submission of the request for renewal/extension, he spoke by telephone with Evans, who told him that he had received a note from Hamilton stating that the request should be denied. Terchunian related that Evans told him that when he queried Hamilton as to the basis for the denial, Hamilton purportedly provided none, even upon Evans's request that he in fact furnish justification for the recommended

¹⁵ According to Terchunian, while the property at issue is owned by the BPPA, he had been retained by the Village of West Hampton Dunes to prepare and submit the original permit application to DEC more than five years ago, and approximately one and half years ago, he submitted a timely request for renewal/extension of the permit (i.e., more than 30 days prior to expiration.)

denial, particularly in light of his previously having reviewed and issued the original permit.

Evans confirmed Terchunian's account of their conversation, and added that he had no knowledge of Hamilton's involvement in the review, except that correspondence existed between Hamilton and Richards, perhaps pre-dating Hamilton's re-assignment. As of October 21, 2009, the date the Inspector General interviewed Evans, the application had been neither approved nor denied. It was, he said, "still languishing." In contrast to Terchunian's opinion that the original permit is still valid because there had been a timely filing of a renewal request, Evans asserted that the permit had "expired," but that DEC could "re-issue" it within two years of expiration. That Regional Permit Administrator Evans and DEC in general has allowed the application to "languish" without resolution is unacceptable.

Indeed, the applicable regulation (6 NYCRR § 621.11(f)), requires that DEC notify the applicant by mail of its decision on renewals, modifications, reissuances, transfers or relinquishment of permit requests, on or before 15 calendar days after receipt of the application, except as provided in subdivisions (h) and (j). Subdivision (h) sets forth the circumstances in which DEC may determine that any application for renewal or modification will be treated as a new application, and in such cases, on or before 15 calendar days after receipt of the application, the department must mail the applicant notice of such a determination, and a further determination of whether the application is complete. Subdivision (j) provides that if the department or its agent fails to mail the applicant the notice of its decision as required in subdivision (f) or (h) of this section, the applicant is entitled to make notice of that failure and receive a decision within five working days pursuant to subdivisions 621.10(b) and (c) of this Part.

According to the DEC Permit Application Database on DEC's Website, the permit renewal application was received on January 8, 2008, and the final decision regarding the application was due on January 23, 2008. Clearly, DEC failed to comply with its regulations by allowing BBPA's renewal application to "languish" for nearly two years.¹⁶

In response to the Inspector General's inquiries during the instant investigation, DEC reiterated that it has been and is currently engaged in a far reaching initiative designed to address longstanding concerns related to the Tidal Wetlands Regulatory Program including: the lack of written policy guidance for staff which results in a perceived lack of consistency in permit decisions; and an historically inordinate level of involvement by the Natural Resources Supervisor [i.e., Hamilton] in the administration of the program, including direct involvement in technical reviews of individual permit applications. To address the former issue, a series of "Guidance Documents" have been created over the course of the past year to provide staff with direction relative to issues commonly confronted in reviews of tidal wetlands permit applications. The first series of those documents has been publically noticed in the Environmental Notice Bulletin, and is

¹⁶ It is not apparent that BPPA ever availed itself of the regulatory mechanism for receiving a decision upon DEC's failure to act.

being subjected to a public review and comment period. A second series of guidance documents is undergoing final internal review by an internal DEC management “Sponsor Team”, to be finalized and published shortly.

To address the second issue, in August 2008 DEC altered the organizational structure and chain of command for the Tidal Wetlands Regulatory Program to eliminate Hamilton’s involvement in the program altogether, and appointed a Tidal Wetlands Section Chief (Dawn McReynolds, Biologist 3) to assume oversight of the program, and directed that the program would report directly to Ms. McReynolds pending the result of the initiative.

With respect to BBPA’s particular application for renewal/extension, Scully recently reported to the Inspector General that in light of the unexplained disparities and inconsistencies between Hamilton’s 2002 technical review of the initial application and Richards’s subsequent review of the project regarding the pending request for renewal/extension, he found that he could have no confidence in either review. Therefore, Scully advised Ms. McReynolds accordingly, and requested that the project be reviewed anew under her direct supervision, the results of which, he believes, will enable DEC to determine an appropriate course of action with regard to the pending request for renewal/extension. To date, the review is still pending.

The Notice of Violation Issued to the Village of West Hampton Dunes in July 2009

On July 21, 2009, a DEC Environmental Conservation Officer (ECO) employed in DEC’s Division of Law Enforcement, issued a Notice of Violation (NOV) to the Village of West Hampton Dunes for “conducting a regulated activity in tidal wetlands w/o a permit, to wit: placement of fill,” at 914 Dune Road, which is the site of the West Hampton Dunes Police Constabulary.¹⁷ Vegliante alleged to the Inspector General that the issuance of the NOV had been wrongfully caused by DEC personnel, most notably Scully and Hamilton, for reasons which perhaps included retaliation for the prior complaints about DEC to the Inspector General addressed above. The Inspector General’s investigation did not substantiate this allegation.

The circumstances surrounding the issuance of the NOV are as follows: According to Scully, until he inquired in response to a complaint from a private citizen in or about late March 2009, he had been unaware of the existence of any alleged violations in the vicinity of 914 Dune Road. He subsequently ascertained that DEC had long been aware of the [improper] placement of fill on the property because Matthew Richards had observed and reported it in 2006 and in 2008. Both reports, however, resulted in no

¹⁷ ECL § 25-0401(2) provides that “Activities subject to regulation hereunder include . . .any form of dumping, filling, or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind . . .within or immediately adjacent to inventoried wetlands which may substantially impair or alter the natural condition of the tidal wetland area.” [6 NYCRR § 661.4\(b\)](#), defines “adjacent area” in some detail. In general, subject to more specific boundaries set forth therein, adjacent areas are those within 300 feet landward of a wetland (150 feet in the City of the New York), or up to ten feet in elevation.

action. Upon further inquiry, Scully was informed by Karen Graulich, a supervisor employed in DEC's Bureau of Marine Habitat Protection (BMHP), that no follow-up regarding Richards's observations had occurred because the "aggressive postures" of the Village officials (regarding, in part, the allegations addressed earlier in this report) had created a chilling effect upon the staff. Scully and Graulich then agreed that, because the Division of Law Enforcement (DLE) is a separate, statewide division of DEC not subordinate to the Region One Regional Director, it would be the proper DEC division to determine if a violation should be issued.¹⁸ Scully reported that he was unaware of Charles Hamilton having any involvement in this matter, and when interviewed, Hamilton confirmed that he did not. The Inspector General has uncovered no evidence to the contrary.

With respect to the NOV, DLE Captain Timothy Huss explained that the regional director had contacted his unit about a previous BMHP inspection and requested a determination about whether further action was necessary. Huss met with Matthew Richards, who described the situation, and a determination was reached to issue a citation. On May 26, 2009, Richards had provided Huss with the following information:

"There is ...an on-going problem of placing fill in ...and adjacent to a tidal wetland without NYSDEC permits on private property adjacent to the park entrance. A large volume fill (sand) is continually being placed and removed without permits. A few years ago we had stopped by and took notes/photos on the fill piles at that time but did not pursue violations, as at one time there was a permit issued to the Barrier Beach Preservation Association to construct a temporary office trailer with septic system and utilities. There was also a modification issued to deposit 500 cyds [cubic yards] of sand fill in a 100' x 50' area at this location. To date this permit and modification has long since expired on June 2, 2001.¹⁹ The Village of West Hampton Dunes is currently using this temporary office trailer as their police headquarters. This is a PV [possible violation] and should be addressed. There is a permit application...issued to the BBPA that is still outstanding to extend the deadline (which expired on 2/28/08)."

DLE requested to arrange an additional inspection of the site in question with Richards to confirm the violation. However, according to Captain Huss, due to scheduling conflicts, Richards never met with members of his command, and the decision was made to execute the citation, based upon the original inspection report.

Captain Huss stated that Environmental Conservation Officer (ECO) Alana Lawston was assigned to the case, and she then served an "Administrative Conservation

¹⁸ Captain Timothy Huss of the DLE, who is the Chief Environmental Conservation Officer of Region One, explained that while law enforcement does interact with the regional director and performs various tasks as requested by Region One, the DLE reports directly to a district supervisor (located in White Plains), who in turn reports to an assistant director and ultimately to the director, both located in Albany.

¹⁹ When interviewed by the Inspector General, Matthew Richards stated that the permit which expired in 2001 did not require that fill which had been deposited in accordance with said permit be removed. He had observed, however, that there were additional fill piles on the property beyond what had been authorized by the expired permit, for which an NOV could issue.

Ticket” [ACT] upon the Village of West Hampton Dunes for “conducting a regulated activity in tidal wetlands w/o a permit to wit: placement of fill.” Afterward, a question arose about the ownership of the property where the violation existed. Huss related that a DEC Regional Attorney requested him to communicate with the Village to inform them that there was an error in the issuance of the ACT, due to property ownership, and the citation would therefore be withdrawn and voided.²⁰ The Regional Attorney believed that the property was owned by the Barrier Beach Protection Association (BBPA).

ECO Lawston reported to the Inspector General that in July, 2009, when she went to the site, she observed fill piles close to the wetland and returned a second time to take photographs. On the property in question, inside a trailer which is used as the Village Constabulary, she met with the Chief Constable and informed him that she had been directed by her supervisor to investigate the fill piles. The Chief Constable informed her that Mayor Vegliante was responsible for the property, and, the following day, Lawston issued the summons to Vegliante. While issuing the summons, she advised Vegliante that some fill piles existed on the property which possibly had adverse potential to tidal wetlands. Vegliante replied that he understood, and was aware of the piles. She related that Vegliante accepted the ticket and was very pleasant. She also recounted that Vegliante mentioned Chuck Hamilton, stating that they didn’t like one another and that Chuck hates him.

According to Donald Zlatniski, Chief of Police Constabulary of the Village of West Hampton Dunes, when he spoke to the “DEC officer,” she stated that she had been told to give a violation to somebody pertaining to the sand in the back. He told her that the mayor is in charge of the Village and gave her directions to find him. He related that she had mentioned that her boss, Frank Carbone, had sent her there to give a violation and that Carbone, in turn, had been getting pressure from his bosses. The officer did not say who had been pressing from above. Zlatniski told her that he thought the Village had a permit for the sand.

The Inspector General determined that had a private citizen not complained to DEC about the fill piles, the July 2009 violation would not have been issued. That the violation was issued at that time to the Village of West Hampton Dunes was the result of ECO Lawston having been directed to Mayor Vegliante by his Chief Constable, and not, as claimed by Vegliante, because of Hamilton and Scully. The facts uncovered during the Inspector General’s investigation do not support any finding of retaliation, personal animus, or harassment of Vegliante. To the contrary, it appears that BMHP failed to take action with respect to a violation which its own personnel believed had occurred, rather than risk antagonizing Vegliante.

²⁰ By letter dated October 6, 2009, Captain Huss advised the Village of West Hampton Dunes of the withdrawal of NYSDEC administrative summons # AAK6931260.

FINDINGS AND RECOMMENDATIONS

The Inspector General found that Charles T. Hamilton, DEC's Regional Natural Resources Supervisor in Region One, in connection with his activities in a volunteer organization, arranged for the free, donated use of private homes in an area heavily regulated by DEC. He thereby engaged in conduct which may have violated New York State Public Officers Law § 74(3)(h) which proscribes a state employee from creating the appearance of impropriety by pursuing a course of conduct which might raise suspicion among the public that he was likely to have been engaged in acts that were in violation of his trust. The Inspector General recommended that DEC take appropriate disciplinary action against Hamilton and also conduct a review of those permit applications with which Hamilton had been involved relating to West Hampton Dunes.

The Inspector General further recommended that DEC prioritize the processing of the application for renewal/extension of the permit previously issued to the Barrier Beach Preservation Association, Inc., in addition to its determination about whether a tidal wetlands violation exists upon the BBPA's property. DEC should also ascertain whether there exist other permit applications which have "languished" without timely decisions having been made and take all necessary action to process any such applications. Similarly, DEC should ascertain whether it is in possession of evidence of tidal wetlands violations which have not been acted upon, and to take all required actions with regard thereto.

In addition, the Inspector General has forwarded a copy of this report to the New York State Commission on Public Integrity for further action in regard to Hamilton's apparent violation of the state Public Officers Law. The Inspector General found that the allegations pertaining to actual or threatened adverse action by Hamilton and DEC relating to permits for the property located at 774 Dune Road, and notification to the Town of Southampton, to be unsubstantiated.

* * *

The response by the Department of Environmental Conservation to the Inspector General's report appears on the following pages.

New York State Department of Environmental Conservation

Office of Internal Audit, 12TH Floor

625 Broadway, Albany, New York 12233-1060

Phone: (518) 402-9147 • Fax: (518) 402-9145

Website: www.dec.ny.gov



Alexander B. Grannis
Commissioner

March 15, 2010

The Honorable Joseph Fisch
Office of the Inspector General
61 Broadway
Suite 2100
New York, New York 10006

Re: NYS IG 0718-001-2007

Dear Inspector General Fisch:

The Department of Environmental Conservation (DEC) has reviewed the Inspector General's report concerning the investigation of Charles T. Hamilton, an employee in DEC's Region 1 office. As requested, DEC is providing the following responses to the recommendations contained in this report.

Recommendation #1 – Take appropriate disciplinary action against Hamilton.

DEC's Response: The report indicates that between 1998 until 2005, various officials of West Hampton Dunes provided free housing to Wildfire Academy staff members. DEC is aware that this activity could be viewed as a conflict of interest and represents a possible violation of the Public Officers Law and that this had been referred to the Commission on Public Integrity (Commission) for their review. DEC has been in contact with the Commission and will await their findings. Regarding the immediate actions that can be taken by DEC, unfortunately, pursuant to the Public Employees Federation collective bargaining agreement, no disciplinary action can be taken against an employee for actions that occurred more than one year from the date charges are served, unless such actions would constitute a crime pursuant to NYS Penal Law.

Accordingly, and absent any ability to cite criminal charges, the only option available to DEC would be to conduct a formal counseling session with Mr. Hamilton. In conducting this counseling session, Mr. Hamilton will be told that should any such actions occur in the future, he will be subject to formal disciplinary charges. A copy of a memo documenting this counseling session will be placed in his personnel file.

Recommendation #2 – Review those permit applications that Hamilton was involved with relating to West Hampton Dunes to assure the propriety of their issuance.

DEC's Response: DEC has created a team comprised of representatives from the Bureau of Marine Resources, Division of Environmental Permits, and Office of General Counsel to review permit applications which Mr. Hamilton was involved in to determine the propriety of their issuance. If, during this review, the team identifies any issues regarding the propriety of permits issued, these findings will be referred to DEC's Office of General Counsel and Office of Internal Audit and Investigation for appropriate action.

Recommendation #3 – Prioritize the processing of the application for the renewal/extension of the permit previously issued to the Barrier Beach Preservation Association (BBPA), Inc.

DEC's Response: DEC's Region 1 office has been directed to expedite the processing of this application. As directed by the Regional Director, the application for renewal/extension is being reviewed by the Section Chief for Tidal Wetlands Administration in DEC's Bureau of Marine Resources. As a result of this review, DEC staff determined the need for additional information. DEC staff will communicate the need for such information directly to the BBPA as the next step in the review process.

Recommendation #4 – Determine whether a tidal wetlands violation exists upon the property of the Barrier Beach Preservation Association, Inc.

DEC's Response: DEC Solid and Hazardous Materials staff conducted an inspection of the BBPA property on November 19, 2009 and determined that piles of material on the site constitute solid waste, subject to regulation by DEC pursuant to Solid Waste regulations (NYCRR Part 360). DEC notified BBPA of this determination by letter dated November 30, 2009, and advised BBPA that solid waste at the site must be removed and properly disposed.

Recommendation #5 – Determine whether there are any permit applications which have languished without timely decisions having been made and take all necessary actions to process such applications.

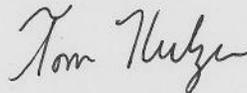
DEC's Response: DEC's Division of Environmental Permits has been directed to review and analyze the volume of pending permit applications. DEC staff has been instructed to identify those applications for which required review timeframes have been exceeded, and to process any such applications on a priority basis.

Recommendation #6 – Determine whether DEC is in possession of evidence of tidal wetland violations that have not been acted upon, and take all required actions with regard to such.

DEC's Response: DEC's Bureau of Marine Resources Section Chief for Tidal Wetlands Administration and Region 1 Office of General Counsel in coordination with the Program Manager for the Region 1 Bureau of Marine Habitat Protection have been directed to conduct a review to determine whether DEC is in possession of evidence of any other tidal wetlands violations which have not been acted upon. If any such violations are identified, these staff are to make recommendations concerning the actions necessary with regard to such violations.

If you or your staff has any questions regarding DEC's response, please contact me at 518-402-9147.

Sincerely,

A handwritten signature in cursive script that reads "Tom Kulzer".

Tom Kulzer
Director

c: P. Foglia, OSIG