

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Ashville Corporation
Greene Plastics Corporation**

FILE NO.: Dam State I.D. 229

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) The subject property is located at Assessor's Plat 14, Lot 25 in the town of Hopkinton, Rhode Island (the “Property”). The Property includes a former water body identified as Blue Pond and a former dam and associated spillway identified as Blue Pond Dam, State Identification Number 229 (the “Dam”).
- (2) The Property is owned by Ashville Corporation. Ashville Corporation acquired the Property on or about 1993.
- (3) Ashville Corporation is owned by Greene Plastics Corporation.
- (4) The Dam has been classified as a Significant Hazard dam.
- (5) Inspections of the Dam were performed by GZA GeoEnvironmental Inc. (“GZA”) on November 15, 2006 on behalf of DEM and by Pare Engineering Corp. (“Pare”) on December 6, 2004 and June 8, 2007 on behalf of Ashville Corporation. The inspections performed by GZA and Pare revealed the following:
 - (a) an inoperable low level gate;
 - (b) excessive vegetation on the upstream and downstream embankments;
 - (c) significant leakage through the downstream embankment at several locations;
 - (d) rotation or movement of the upstream and downstream stone masonry walls;

- (e) erosion along the upstream and downstream embankments; and
 - (f) sinkholes on the crest.
- (6) On February 1, 2005, Pare submitted a report to Ashville Corporation summarizing the findings of the December 6, 2004 inspection (the “2005 Engineering Report”). The 2005 Engineering Report made specific recommendations to address the deficiencies observed during the inspection.
 - (7) On April 30, 2007, DEM issued a Notice of Intent to Enforce to Ashville Corporation (the “NIE”). The NIE included a copy of the report prepared by GZA summarizing the findings of the November 15, 2006 inspection (the “2006 Engineering Report”).
 - (8) The NIE advised Ashville Corporation that based on the 2006 Engineering Report DEM considered the Dam to be unsafe. The NIE required Ashville Corporation to submit to DEM within thirty (30) days of receipt of the NIE a report prepared by a registered professional engineer with experience in dam repair. The report was to describe, as an interim measure, how Blue Pond would be brought and maintained at a lowered elevation, such that the leakage areas no longer posed a safety threat as determined by the engineer, thereby protecting property downstream of the Dam. The NIE further stated that the report must include a schedule for completion of the work.
 - (9) On June 27, 2007, Pare submitted a report to Ashville Corporation summarizing the findings of the June 8, 2007 inspection (the “2007 Engineering Report”). The 2007 Engineering Report recommended a controlled breach of the Dam to address the deficiencies observed during the inspection and to comply with the NIE.
 - (10) On October 2, 2007, DEM issued a letter to Pare stating that a controlled breach of the Dam did not require a permit from DEM as an interim measure to comply with the NIE.
 - (11) On March 31, 2010 and April 2, 2010, Pare sent an email and photographs of the Dam to DEM. The email and photographs documented a major breach in the embankment of the Dam and release of water from Blue Pond (the “Breach”). The Breach occurred in the section of the embankment where significant leakage was observed by GZA and Pare.
 - (12) The Breach caused damage to roads and private property in the town of Hopkinton.
 - (13) The Respondents failed to address the deficiencies identified in the 2005 Engineering Report, the 2006 Engineering Report, or the 2007 Engineering Report.
 - (14) The Respondents failed to perform the controlled breach of the Dam recommended by Pare.

- (15) The Respondents failed to comply with the NIE.
- (16) Respondents had an obligation to maintain the Dam in a safe condition pursuant to Rule 4 (A) of the DEM Rules and Regulations for Dam Safety (the “Dam Safety Regulations”).

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **Dam Safety Regulations, Rule 4A** – requiring the owner of a significant hazard dam to maintain the dam in a safe condition.

D. Penalty

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

Fifty-Nine Thousand Seven Hundred Forty Seven Dollars (\$59,747.00)

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

E. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through D above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b),

- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, 3RD Floor
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Richard M. Bianculli Jr., Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Richard M. Bianculli Jr. at the DEM Office

of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7400.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section E above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Ashville Corporation
c/o John F. Reis, Registered Agent
926 Park Avenue
Cranston, RI 02910

Greene Plastics Corporation
c/o John F. Reis, Registered Agent
926 Park Avenue
Cranston, RI 02910

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Dam Safety

File No.: State I.D. 229

Respondents: Ashville Corporation and Greene Plastics Corporation

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1) – Failure to Maintain Dam in Safe Condition	Type I (\$ <u>1,000</u> Max. Penalty)*	Moderate	\$600.00	27 months	\$16,200.00
<i>SUB-TOTAL</i>					\$16,200.00

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NONCOMPLIANCE		
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:		
- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR		
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
<p>Economic Benefit of noncompliance identified by the State of Rhode Island for failing to repair the low level outlet control. One time non-depreciable expense was determined using figures in the 2005 Engineering Report. The Economic Benefit gained was calculated using an EPA computer model entitled "BEN". The model calculates the economic benefit of noncompliance by performing a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.</p>	<ul style="list-style-type: none"> • Profit Status For Profit Corporation • Filing Status For Profit Corporation • Initial Capital Investment \$0 • One-time Non-depreciable Expense \$50,000 • Annual Expense \$0 • First Month of Non-Compliance January 1, 2008 • Compliance Date January 1, 2011 • Penalty Due Date January 1, 2011 • Useful Life of Pollution Control N/A • Equipment Annual Inflation Rate PCI • Discount/Compound Rate 9.6% 	<p>\$43,547.00</p>
SUB-TOTAL		\$43,547.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$59,747.00

PENALTY MATRIX WORKSHEET

CITATION: *Failure to Maintain Dam in Safe Condition*
 VIOLATION NO.: C (1)

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents failed to maintain Blue Pond Dam, which was classified as Significant Hazard, in a safe condition. Maintaining a Significant Hazard dam in a safe condition is of importance to public safety and the regulatory program.</p> <p>(B) Environmental conditions: The Dam was located on Blue Pond brook in the town of Hopkinton. The Dam stored water for Blue Pond, which was an approximately 55 acre water body with a storage capacity of approximately 550 acre-feet (179,000,000 gallons). The Dam was an earthen structure in an unsafe condition (as documented by GZA GeoEnvironmental Inc and Pare Engineering Corporation in 2004, 2006, and 2007).</p> <p>(C) Amount of the pollutant: Not relevant</p> <p>(D) Toxicity or nature of the pollutant: Not relevant</p> <p>(E) Duration of the violation: Unknown. DEM issued a Notice of Intent to Enforce (NIE) to Ashville Corporation on April 30, 2007 requiring interim measures to maintain the dam in a safe condition. Pare Engineering submitted a report to Ashville Corporation on June 27, 2007 recommending a controlled breach of the Dam. DEM issued a letter to Pare Engineering on October 2, 2007 stating that a controlled breach of the Dam did not require a permit from DEM as an interim measure to comply with the NIE. The penalty is being assessed from January 1, 2008 to March 30, 2010 (the date of the Dam breach).</p> <p>(F) Areal extent of the violation: Total extent unknown. The Dam breach caused the loss of Blue Pond and damage to town roads and private property downstream of the Dam.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent and/or mitigate the unsafe condition at the Dam. Engineering reports were completed by Pare Engineering on behalf of Ashville Corporation in 2005 and 2007, which recommended a controlled breach of the Dam. Ashville Corporation also failed to comply with the NIE that required interim measures to maintain the Dam in a safe condition. DEM issued a letter to Pare Engineering on October 2, 2007 stating that a controlled breach of the Dam did not require a permit from DEM as an interim measure to comply with the NIE.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not relevant
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to the Respondents for their failure to comply with the recommendations of Pare Engineering and the NIE.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant

MAJOR	<u> X </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 1,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800 \$600.00	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200