

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Georges Bockstael

**FILE NOs.: Dam State I.D. 371
and OCI-DAMS-16-21**

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 party (“Respondent”) has violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Administrative History

On 24 October 2018, the DEM notified Respondent by electronic correspondence that it had completed its review of the findings of an inspection of the dam that is owned by Respondent that is the subject of this Notice of Violation (“NOV”). In the correspondence, the DEM offered Respondent an opportunity to meet with the DEM at the dam to go over the findings of the inspection. Respondent did not respond to the correspondence.

C. Facts

- (1) The property includes a dam identified as Pearce Pond Dam, State Identification Number 371 (“Dam 371”), located approximately 400 feet northwest of the intersection of Howard Avenue and Lincoln Avenue, approximately 60 feet south of Howard Avenue, on Assessor’s Plat 96, Lot 15 in the Town of Coventry, Rhode Island (the “Property”).
- (2) Respondent owns the Property.
- (3) Dam 371 is classified by the DEM as HIGH Hazard.
- (4) On 15 July 2016, Dam 371 was inspected. The inspection revealed the following:
 - (a) Vegetation on the upstream side and crest of the embankment located right of the primary spillway and on the downstream side of the embankment located right and left of the primary spillway that did not allow a proper inspection to be performed; and
 - (b) An inoperable low-level outlet.

- (5) In a certified letter from the DEM to Respondent dated 29 August 2016, the DEM forwarded a registration form (the "Registration Form") for Dam 371. On 7 September 2016, the letter was delivered to Respondent.
- (6) On or about 16 September 2016, Respondent requested a hearing to contest the hazard classification.
- (7) On 13 April 2018, Respondent withdrew his request for a hearing.
- (8) As of the date of the NOV, Respondent has not submitted the Registration Form.
- (9) The DEM considers Dam 371 unsafe because of the findings described in subsection B (4) above.

D. Violation

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

- (1) **Rhode Island Code of Regulations titled *Rules and Regulations for Dam Safety (250-RICR-130-05-1)* (the "Dam Safety Regulations"), Rule 8 (recently amended to Part 1.8)** – requiring the owner of a dam to provide a fully completed registration form to the DEM.
- (2) **Dam Safety Regulations, Rule 4A (recently amended to Part 1.6A)** – requiring the owner of a high hazard dam to maintain the dam in a safe condition.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Within 14 days of receipt of the NOV**, complete and submit to the DEM the Registration Form, a copy of which is enclosed.
- (2) **Within 90 days of receipt of the NOV**, retain a professional engineer fully registered in the State of Rhode Island, who is experienced with dam inspections, design, construction and repair (the "Dam Engineer").
- (3) **Within 90 days of receipt of the NOV**, cut or remove the vegetation from the areas of Dam 371 as described in subsection B (4) above in accordance with the Dam Safety Regulations, Part 1.10A. Cutting or removal shall be in sufficient amounts to allow a thorough visual inspection to be performed. The DEM shall be notified upon commencement and completion of this work.
- (4) **Within 180 days of receipt of the NOV**, the Dam Engineer must complete a visual inspection of Dam 371 and submit a report of the inspection findings to the DEM. The report must specify the actions necessary, if any, to return the dam to

a safe condition and include a schedule to complete the work. For any proposed repairs, the report must include an application prepared in accordance with the Dam Safety Regulations, Part 1.10B.

- (5) **Within 270 days of receipt of the NOV**, the Dam Engineer must apply to the DEM in accordance with the Dam Safety Regulations, Part 1.10B to repair the inoperable low-level outlet of Dam 371. The application must include a schedule to complete the work.
- (6) The reports, applications, and/or schedules required above shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to Respondent either granting formal approval or stating the deficiencies therein. **Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies**, Respondent shall submit to the DEM a modified report, application, and/or schedule or additional information necessary to correct the deficiencies.
- (7) Commence work specified in the schedule approved by the DEM within 20 days of approval (unless otherwise expressly authorized by the DEM in writing to commence work later) and complete such work in accordance with the approved schedule.

F. 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's 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 the DEM's Administrative Adjudication Division, at the following address, within 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, Room 350
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

Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* Part 1.7B.

- (2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmit, 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 the 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 regarding 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 (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to Town of Coventry, Rhode Island wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 46-19-4(c), as amended.
- (7) The 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, please have your attorney contact Christina Hoefsmit of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Paul Guglielmino of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7122.

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

By: _____
David E. Chopy, Administrator
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Georges Bockstael
122 Torry Road
Wakefield, RI 02879

by Certified Mail.
