

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Fred A. Gott, Jr.
Jane H. Gott
Carl Gott**

**FILE NOS.: DAM State I.D. 127
OCI-DAMS-14-63**

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 the DEM's jurisdiction.

B. Facts

- (1) The property is a dam identified as Belknap Pond Dam, State Identification Number 127, located approximately 250 feet north of the intersection of Greenville Avenue and Pine Hill Avenue, approximately 285 feet northwest of Pine Hill Avenue, Assessor’s Plat 50, Lot 8 in the town of Johnston (“Dam 127”).
- (2) Respondents own Dam 127.
- (3) Dam 127 is classified by the DEM as Significant Hazard.
- (4) On 9 December 2011 and 1 November 2014, Dam 127 was inspected. The inspections revealed the following:
 - (a) Vegetation (leaf cover and yard waste and branches) present on 9 December 2011 on the left side of the downstream embankment that did not allow a proper inspection to be performed;
 - (b) Vegetation (dense brush) present on 1 November 2014 on the right side of the upstream embankment and the crest right of the overflow spillway that did not allow a proper inspection to be performed;
 - (c) Leakage and sediment transport in several locations along the toe of the wall of the downstream embankment (the “Leakage”); and
 - (d) A trash rack in front of the overflow spillway (the “Trash Rack”) and a significant accumulation of leaves and small debris below and on the Trash Rack with moderate obstruction of flow.

- (5) The DEM considers Dam 127 unsafe because of the findings described in Section B(4) above.

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) **DEM's Rules and Regulations for Dam Safety (the "Dam Safety Regulations"), Rule 4A** – requiring the owner of a significant hazard dam to maintain the dam in a safe condition.

D. 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 30 days of receipt of this Notice of Violation ("NOV")**, remove the Trash Rack.
- (2) **Within 90 days of receipt of the NOV**, cut or remove the vegetation from the areas of Dam 127 as described in Section B(4) above in accordance with the DEM's Dam Safety Regulations, Rule 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.
- (3) **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").
- (4) **Within 180 days of receipt of the NOV**, the Dam Engineer must complete the following in accordance with the DEM's Dam Safety Regulations, Rule 11C:
 - (a) A visual inspection of Dam 127; and
 - (b) A detailed investigation of Dam 127 to assess the Leakage; and
 - (c) Submit a report of the inspection/investigation findings to the DEM. The report must specify the actions (in addition to the actions ordered in the NOV) necessary 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 DEM's Dam Safety Regulations, Rule 10B.

- (5) The report, application, and/or schedule required above shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to Respondents 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.
- (6) 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 at a later time), and complete such work in accordance with the approved schedule.

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'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
One Capitol Hill, 4TH Floor
Providence, RI 02903
 - (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's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

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

Joseph J. LoBianco, 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 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 (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 the town of Johnston 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 Joseph J. LoBianco at 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, Chief
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Fred A. Gott, Jr.
9 Pine Hill Avenue
Johnston, RI 02919

Jane H. Gott
9 Pine Hill Avenue
Johnston, RI 02919

Carl Gott
307 West Greenville Road
North Scituate, RI 02857

by Certified Mail.
