

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

IN RE: Natco Products Corporation

FILE NO.: Dam State I.D. 148

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 DEM's jurisdiction.

B. Facts

- (1) The subject property is located at 33 Factory Street in the town of West Warwick, Rhode Island (the “Property”). The Property includes a dam and associated spillway identified as Arctic Dam, State Identification Number 148 (the “Dam”).
- (2) The Dam is owned by the Respondent, Natco Products Corporation.
- (3) The Dam is classified by DEM as High Hazard.
- (4) The Dam includes a flashboard structure on the spillway for the hydroelectric operation at the Property. The flashboard structure consists of wooden boards that are fastened to the Dam by metal brackets. The flashboard structure was designed so that the wooden boards break away during high flows.
- (5) DEM inspected the Dam on November 17, 2004, September 21, 2007, and March 15, 2010. The inspections revealed the following:
 - (a) an inoperable low level gate; and
 - (b) the wooden boards still in place.
- (6) On March 15, 2010 the DEM inspector spoke with the Respondent’s engineering consultant, Mr. James Russell, of the RT Group, Inc. Mr. Russell informed the DEM inspector that the wooden boards failed to break away as designed and that immediate action should be taken to manually break the wooden boards with a backhoe.
- (7) DEM inspected the Dam on March 30, 2010 and March 31, 2010. The DEM inspector observed that the Respondent was working to manually break the wooden boards with a backhoe. At the time of the March 31, 2010 inspection, the Respondent had removed sixty (60) feet in length of wooden boards and fifty (50) feet in length of wooden boards remained in place.

- (8) DEM considers the Dam unsafe for the following reasons:
 - (a) the low level outlet gate is inoperable; and
 - (b) all the wooden boards have not been removed.
- (9) As of the date of this Notice of Violation (“NOV”), the Respondent has not taken action to correct the unsafe conditions at the Dam.

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 high 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 thirty (30) days of receipt of the NOV**, remove all remaining wooden boards from the spillway.
- (2) **Within thirty (30) days of receipt of the NOV**, submit an application to DEM to repair the low level outlet gate so that upon completion of the work, the Dam is in a safe condition. The application must include a schedule for completion of the work.
- (3) The application required in Section D.2 above shall be subject to DEM review and approval. Upon review, the DEM shall provide written notification to the Respondent either granting formal approval or stating the deficiencies therein. **Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies**, the Respondent shall submit to the DEM a modified application or additional information necessary to correct the deficiencies.
- (4) Commence work on the project in accordance with the method approved by the Director within twenty (20) days of approval (unless otherwise expressly authorized by the Director 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 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:

Natco Products Corporation
c/o Steven I. Rosenbaum, Esq., Registered Agent
30 Exchange Street
Providence, RI 02903

by Certified Mail.
