

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

**IN RE: Charles E. Bates  
Pauline Bates**

**FILE NO.: Dam State I.D. 121**

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 a dam identified as Sprague Lower Reservoir Dam, State Identification Number 121, located on the easternmost edge of the southern leg of the pond and situated in a nearly north-south direction west of Arrowhead Trail and northwest of the intersection of Arrowhead Trail and Indian Run Trail in the town of Smithfield, Rhode Island (“Dam 121”).
- (2) The Respondents own Dam 121.
- (3) Dam 121 is classified by DEM as High Hazard.
- (4) On November 23, 2009 Dam 121 was inspected. The inspection revealed the following:
  - (a) Thick leaf cover on the upstream and downstream embankments did not allow a proper inspection to be performed;
  - (b) Heavy brush cover of the left training wall of the primary spillway did not allow a proper inspection to be performed; and
  - (c) Unknown operability of the low level outlet.
- (5) In a certified letter from DEM to the Respondents dated April 2, 2012, which was delivered on July 7, 2012, DEM forwarded a registration form for Dam 121. The Respondents were required to complete and return the form to DEM by July 21, 2012.

- (6) DEM considers Dam 121 unsafe for the following reasons:
  - (a) Thick leaf cover and heavy brush cover that inhibits a proper inspection; and
  - (b) Unknown operability of the low level outlet.
- (7) As of the date of this Notice of Violation (“NOV”), the Respondents have not provided the registration form to DEM.

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 high hazard dam to maintain the dam in a safe condition
- (2) **DEM’s Dam Safety Regulations, Rule 8** – requiring the owner of a dam to provide a fully completed registration form to DEM.

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 fourteen (14) days of receipt of the NOV**, complete and submit to DEM the enclosed registration form.
- (2) **Within ninety (90) days of receipt of the NOV**, remove the heavy leaf cover from the upstream and downstream embankments and cut and remove the heavy brush cover from the left training wall of the primary spillway of Dam 121 in accordance with the Dam Safety Regulations, Rule 10A. Cutting or removal shall be in sufficient amounts to allow a thorough visual inspection to be performed. DEM shall be notified upon commencement and completion of this work.
- (3) **Within one hundred eighty (180) days of receipt of the NOV**, retain a professional engineer fully registered in the State of Rhode Island, who is experienced with dam inspections, to complete a visual inspection of Dam 121 in accordance with the Dam Safety Regulations, Rule 11C and submit a report of the inspection findings to DEM. The report must include an evaluation of the operability of the low level outlet and must specify any actions necessary to return the dam to a safe condition, including directing the outlet flow from the low level outlet away from the toe of the downstream embankment and a schedule to complete the work. For any proposed repairs to Dam 121, the report must include

an application prepared in accordance with the Dam Safety Regulations, Rule 10B.

- (4) The report, application, and/or schedule required in Section D.3 above shall be subject to DEM review and approval. Upon review, the DEM shall provide written notification to the Respondents 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 Respondents shall submit to the DEM a modified report, application, and/or schedule or additional information necessary to correct the deficiencies.
- (5) Commence work specified in the schedule approved by the DEM within twenty (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 Administrative Adjudication Division regarding the allegations and/or orders 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  
One Capitol Hill, 2<sup>ND</sup> Floor  
Providence, RI 02903
  - (c) Indicate whether you deny the alleged violations. 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, 4<sup>TH</sup> 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. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) 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, 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

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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:

Charles E. Bates  
19 Indian Run Trail  
Smithfield, RI 02917

Pauline Bates  
19 Indian Run Trail  
Smithfield, RI 02917

by Certified Mail.

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