

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

**IN RE: Estate of George Russell James**

**FILE NO.: Dam State I.D. 424**

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. Facts

- (1) The subject property is a dam identified as Block Island Rod and Gun Club Pond Dam, State Identification Number 424, located approximately 296 feet northeast of the intersection of Connecticut Avenue and Old Town Road, approximately 667 feet southeast of Old Town Road, Assessor’s Map 6, Lot 70 in the town of New Shoreham, Rhode Island (“Dam 424”).
- (2) The Respondent owns Dam 424.
- (3) Dam 424 is classified by the DEM as Significant Hazard.
- (4) On 27 June 2012, Dam 424 was inspected. The inspection revealed the following:
  - (a) Vegetation on the upstream embankment and downstream embankment that did not allow a proper inspection to be performed;
  - (b) Vegetation in the downstream channel below the primary spillway that was impacting flow; and
  - (c) No auxiliary spillway present.
- (5) A review of the DEM’s records revealed the following:
  - (a) A copy of a plan for Dam 424 entitled “Block Island Rod & Gun Club, Block Island, RI, Pond Plan for Mill Tail Brook”, stamped approved by the Chief of the Division of Harbors and Rivers on 21 September 1949 (the “Approved Plan”); and

- (b) The Approved Plan shows an auxiliary spillway located at the left abutment and consists of a riprapped, 5 foot deep, trapezoidal channel that extends from the upstream side to over 100 feet downstream and into the discharge channel.
- (6) The DEM considers Dam 424 unsafe for the following reasons:
  - (a) Excessive vegetation inhibits a proper inspection; and
  - (b) No auxiliary spillway is present.

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 90 days of receipt of this Notice of Violation (“NOV”)**, remove the vegetation from the upstream embankment and downstream embankment of Dam 424.
- (2) **Within 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, and have the engineer complete a visual inspection of Dam 424 in accordance with the DEM’s Dam Safety Regulations, Rule 11C and submit a report of the inspection 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 to Dam 424, the report must include an application prepared in accordance with the DEM’s Dam Safety Regulations, Rule 10B.
- (3) **Within 180 days of receipt of the NOV**, retain a professional engineer fully registered in the State of Rhode Island, who is experienced with design, construction and repair, to submit an application to the DEM in accordance with the DEM’s Dam Safety Regulations, Rule 10B to construct an auxiliary spillway that passes the same flow as shown on the Approved Plan. The application must include a schedule to complete the work.

- (4) The report and applications required in Sections D.2 and D.3 above shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to the 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**, the Respondent 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 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 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, 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 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. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) An original signed copy of this NOV is being forwarded to the town of New Shoreham 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.
- (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 Bianculli at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Paul Guglielmino of the DEM 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

\_\_\_\_\_  
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:

Estate of George Russell James  
c/o Julie Hackett  
31 Wellsweep Road  
Branford, CT 06405

by Certified Mail.

\_\_\_\_\_