

3. On June 11, 2004 Respondent notified DeKalb County of the reclassification of the dam from a Category II to a Category I dam via certified mail. *Respondent's Motion for Summary Determination, Exhibit 1.*

4. This matter was referred to the Office of State Administrative Hearings for adjudication on or about September 12, 2013.

5. On November 22, 2013, Respondent filed a Motion for Summary Determination with the undersigned. In its motion, Respondent introduced evidence that it had identified DeKalb County as the true owner of the dam and that, by providing notice to DeKalb County on June 11, 2004, it had given notice to the owner of the dam, fulfilling the statutorily-imposed prerequisite to reclassifying the dam. Respondent argued that since it was undisputed that DeKalb County was the owner of the dam and that it demonstrated that it had adhered to the notice requirements of the statute, there was no longer "a genuine issue of material fact for determination." Therefore, Respondent contended that its Motion for Summary Determination should be granted. *Respondent's Motion for Summary Determination.*

6. On December 12, 2013, the parties entered into a stipulation giving Petitioner until December 20, 2013 to respond to Respondent's Motion for Summary Determination. *Notice of Appearance, Stipulation, Joint Motion for Extension of Time and Order Thereon.*

7. On December 20, 2013, Petitioner filed a document entitled "Petitioner's Response to Motion for Summary Determination and Motion to Vacate and declare that Respondent's 2003 Notice Letter is Inapplicable to Petitioner" (hereinafter "Petitioner's Motion to Vacate"). In Petitioner's Motion to Vacate, Petitioner submitted that Respondent's Motion for Summary Determination should be denied and proceeded to argue that the July 2003 notification letter did not apply to Petitioner and should be "vacated and declared null and void." Petitioner attached an Affidavit from Jack Woodall, President of Kingscliff Lake Corporation, to the Motion to Vacate. Petitioner included exhibits along with Mr. Woodall's affidavit, including plats of the King's Cliff Lake properties and correspondence with the Safe Dams Program. These correspondences directed Petitioner to take action to maintain the dam. *Petitioner's Motion to Vacate, Exhibits A, B, C, E-1, E-2; Affidavit of Jack Woodall.*

8. Petitioner submitted that this evidence demonstrated that Kingscliff Lake Corporation was not the owner of the dam and, therefore, that Respondent could not "require Petitioner to operate the dam and comply with regulatory procedures with respect to such operation." Petitioner submitted that, because it did not own the dam, it could not possibly "operate, maintain, repair, or remediate the Dam or carry out any of the regulatory procedures referenced in the 2003 Notice Letter," and that, therefore, the 2003 Notice Letter should be "vacated and declared null and void." *Petitioner's Motion to Vacate.*

9. Respondent immediately replied to the December 20 Motion with a "Motion to Strike Petitioner's Motion . . . and Affidavit of Jack Woodall and Exhibits Attached Thereto . . ." on December 23, 2013 (hereinafter "Respondent's Motion to Strike"). Respondent contended that Petitioner's Motion to Vacate, the Jack Woodall Affidavit, and all exhibits attached thereto

should be stricken from the record because: (1) Petitioner's Motion was an untimely Motion for Summary Determination; (2) Petitioner's Motion fails to include a statement of material facts as to which there is no genuine issue for determination and (3) Petitioner's motion is premised upon contentions that are outside the scope of the sole issue before the Court as framed by the allegations of the Petition for Hearing. *Respondent's Motion to Strike*.

III. Conclusions of Law

1. OSAH Rule 15 provides that a party "may move, based on supporting affidavits or other probative evidence, for summary determination in its favor upon any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination." GA. COMP. R. & REGS. 616-1-2-.15 (1). "When a motion for summary determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination." *Id. at (2)*.
2. Petitioner originally appealed Respondent's action on the basis that it would be aggrieved by Respondent's reclassification of King's Cliff Lake Dam as a Category I dam. Petitioner requested that Respondent's action be "vacated" only on the basis that Respondent failed to provide the true owner with notice. *Petitioner's Appeal dated August 14, 2003*.
3. Respondent submitted evidence in its Motion for Summary Determination that it provided the owner of the dam with notice that it intended to classify King's Cliff Lake Dam as a Category I dam in the manner prescribed by the Georgia Code. *Respondent's Motion for Summary Determination; See O.C.G.A. § 12-5-376(a) and (b)*.
4. Petitioner failed to refute Respondent's evidence in its Motion to Vacate and thereby failed to show that there is a genuine issue of material fact for determination. Rather, Petitioner reiterated that it did not own the King's Cliff Lake Dam property and moved that the undersigned vacate the July 21 notification letter.

IV. Decision

IT IS HEREBY ORDERED that Respondent's Motion for Summary Determination is **GRANTED**.

SO ORDERED this 26th day of December, 2013.



MICHAEL MALIHI, Judge