

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

**IN RE: Gary M. Appolonia  
James H. Paolucci**

**FILE NO.: Dam State I.D. 455**

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 Boucher Farm Dam, State Identification Number 455, located approximately 550 feet northwest of the intersection of Cowesett Avenue and Coit Avenue, Assessor’s Plat 28, Lots 501 and 598 in the town of West Warwick, Rhode Island (“Dam 455”).
- (2) James H. Paolucci owns Lot 501.
- (3) Gary M. Appolonia owns Lot 598.
- (4) Dam 455 is classified by the DEM as Significant Hazard.
- (5) On 8 December 2011 Dam 455 was inspected. The inspection revealed heavy vegetation and leaf cover on the upstream embankment, crest and downstream embankment that did not allow a proper inspection to be performed.
- (6) In certified letters from the DEM to the Respondents dated 17 June 2013, which were delivered on 22 June 2013, the DEM forwarded a registration form for Dam 455. The Respondents were required to complete and return the form to the DEM by 6 July 2013.
- (7) The DEM considers Dam 455 unsafe because of the excessive vegetation and leaf cover that inhibit a proper inspection.
- (8) As of the date of this Notice of Violation (“NOV”), the Respondents have not provided the registration form to the 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 significant 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 the 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 14 days of receipt of the NOV**, complete and submit to the DEM the enclosed registration form.
- (2) **Within 90 days of receipt of the NOV**, cut or remove the vegetation and leaf cover from the upstream embankment and downstream embankment of Dam 455 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 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 455 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 any actions necessary to return the dam to a safe condition and include a schedule to complete the work. For any proposed repairs to Dam 455, the report must include an application prepared in accordance with the DEM's Dam Safety Regulations, Rule 10B.
- (4) The report, application, and/or schedule required in Section D.3 above shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to the 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**, 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 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 West Warwick 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: \_\_\_\_\_

