

**STATE OF RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Apponaug Corporation**

**FILE NOs.: Dam State I.D. 764  
and OCI-DAMS-19-19**

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 property is a dam identified as Grist Mill Apartment Dam, State Identification Number 764 (“Dam 764”), located approximately 1,045 feet northwest of the intersection of Tollgate Road and Centerville Road and approximately 212 feet southwest of Tollgate Road, on Assessor’s Plat 246, Lot 318, in Warwick, Rhode Island (the “Property”).
- (2) Respondent owns Dam 764.
- (3) Dam 764 is classified by DEM as HIGH Hazard.
- (4) On 10 May 2019, Dam 764 was inspected. The inspection revealed vegetation on the upstream side of the embankment that prevented a proper inspection.
- (5) In a certified letter from DEM to Respondent dated 1 September 2020, DEM forwarded a registration form (the “Registration Form”) for Dam 764. On 9 September 2020, the letter was delivered to Respondent. Respondent was required to complete and return the form to DEM by 25 September 2020.
- (6) As of the date of this Notice of Violation (the “NOV”), Respondent has not submitted the Registration Form.
- (7) DEM considers Dam 764 unsafe because of the vegetation that prevented a proper inspection.

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) ***Rules and Regulations for Dam Safety [effective 20 December 2007 to 17 June 2020]***
  - (a) **Part 1.6(A)** – requiring the owner of a high hazard dam to maintain the dam in a safe condition.
  - (b) **Part 1.8** – requiring the owner of a dam to provide a fully completed registration form to DEM.
- (2) ***Rules and Regulations for Dam Safety (250-RICR-130-05-1) [effective 17 June 2020 to Current] (the “Dam Safety Regulations”)***
  - (a) **Part 1.6(A)** – requiring the owner of a high hazard dam to maintain the dam in a safe condition.
  - (b) **Part 1.8** – 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 14 days of receipt of the NOV**, complete and submit to DEM the Registration Form, a copy of which is enclosed.
- (2) **Within 60 days of receipt of the NOV**, retain a professional engineer fully registered in the State of Rhode Island, who is experienced with dam inspections, design, construction and repair (the "Dam Engineer").
- (3) **Within 90 days of receipt of the NOV**, cut or remove the vegetation from the area of Dam 764 as described in subsection B (4) above in accordance with the Dam Safety Regulations, Part 1.10(A). 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.
- (4) **Within 180 days of receipt of the NOV**, the Dam Engineer must complete a visual inspection of Dam 764 and submit a report of the inspection findings to DEM. The report must specify the actions necessary, if any, to return the dam to a safe condition and include a schedule to complete the work. For any proposed repairs, the report must include an application prepared in accordance with the Dam Safety Regulations, Part 1.10(B).

- (5) The report, application and schedule required above shall be subject to DEM's review and approval. Upon review, DEM shall provide written notification to 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**, Respondent shall submit to DEM a modified report, application, and/or schedule or additional information necessary to correct the deficiencies.
- (6) Commence work specified in the schedule approved by DEM within 20 days of approval (unless otherwise expressly authorized by DEM in writing to commence work later) 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 DEM's 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 20 days of your receipt of the 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, Room 350  
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 Part 1.7(B) of the *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* [effective November 27, 2014 to Current]
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, 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 regarding any violation set forth herein, then the 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 (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the City of Warwick, Rhode Island 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
- (7) The 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 Joseph J. LoBianco of DEM's Office of Legal Services at (401) 222-6607 or [joseph.lobianco@dem.ri.gov](mailto:joseph.lobianco@dem.ri.gov). All other inquiries should be directed to David E. Chopy of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 77400 or [david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov).

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

By: \_\_\_\_\_  
David E. Chopy, Administrator  
DEM Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
the within Notice of Violation was forwarded to:

Apponaug Corporation  
c/o The Corporation Trust Company, Registered Agent  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

by Certified Mail.

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