

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Eddy Del Grande
Carmela A. Del Grande**

**FILE NOs.: Dam State I.D. 99
and OCI-DAMS-16-8**

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 Moffett Dam, State Identification Number 99 (“Dam 99”), located adjacent to Great Road, on Assessor’s Plat 22, Lot 41 (“Lot 41”) and Assessor’s Plat 22, Lot 115 (“Lot 115”) in the Town of Lincoln, Rhode Island.
- (2) Respondents own Lot 41 and Lot 115 (the “Property”).
- (3) A portion of Dam 99 lies on the Property.
- (4) Respondents own a portion of Dam 99.
- (5) Dam 99 is classified by the DEM as HIGH Hazard.
- (6) In a certified letter from the DEM to Respondents dated 2 April 2009, the DEM forwarded a registration form (the “Registration Form”) for Dam 99. On 6 April 2009, the letter was delivered to Respondents. Respondents were required to complete and return the form to the DEM by 20 April 2009.
- (7) On 8 June 2016, Dam 99 was inspected. The low-level outlet (“LLO”), located on the Property, was not operated at the time of the inspection, and it is unknown if the LLO is operable.

- (8) On 26 March 2018, the DEM issued a Notice of Intent to Enforce (“NIE”) by certified mail to Respondents. The NIE required Respondents to:
 - (a) Within 90 days of receipt of the NIE, retain a professional engineer fully registered in the State of Rhode Island to investigate the operability of the LLO and have the engineer submit a report to the DEM of the investigation findings; and
 - (b) Within 14 days of receipt of the NIE, submit the Registration Form, a copy of which was included with the NIE.
- (9) On 28 March 2018, the NIE was delivered to Respondents.
- (10) As of the date of this Notice of Violation (“NOV”), Respondents have not responded to the NIE.
- (11) The DEM considers that Dam 99 may be unsafe because of the unknown operability of the LLO.

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 8 (recently amended to Part 1.8)** – requiring the owner of a dam to provide a fully completed registration form to the DEM.
- (2) **DEM’s *Dam Safety Regulations*, Rule 11(A)(4) (recently amended to Part 1.11A.4)** – requiring the owner of a high hazard dam to perform a detailed investigation of the dam whenever the findings of a visual inspection reveal that the dam may be unsafe.

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 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**, the Dam Engineer must complete the following in accordance with the DEM's Dam Safety Regulations, Part 1.11C:
- (a) A detailed investigation of Dam 99 to assess the operability of the LLO; and
 - (b) Submit a report of the investigation findings to the DEM. If it is determined that the LLO is inoperable, the report must specify the actions necessary to repair the LLO and include a schedule to complete the work. For any proposed repairs, the report must include an application prepared in accordance with the DEM's Dam Safety Regulations, Part 1.10B. The report, application, and/or schedule required above shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to 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**, Respondents shall submit to the DEM a modified report, application, and/or schedule or additional information necessary to correct the deficiencies.
- (4) 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 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 the 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 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
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 DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:
- Christina Hoefsmit, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH 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 regarding 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 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 Town of Lincoln, 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 Christina Hoefsmit of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Paul Guglielmino of the DEM's 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

By: _____
David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Eddy Del Grande
575 Great Road
Lincoln, RI 02865

Carmela A. Del Grande
575 Great Road
Lincoln, RI 02865

by Certified Mail.
