

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

**IN RE: City of Newport**

**FILE NOs.: Dam State I.D. 395, 396, 485, 580,  
581, 582, 583, 584, and 585**

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 properties are as follows:

- (a) A dam identified as Lawton Valley Reservoir Dam, State Identification Number 395, located approximately 3,000 feet north of the intersection of West Main Road and Union Street, approximately 650 feet east of West Main Road, in the town of Portsmouth, Rhode Island (“Dam 395”);
- (b) A dam identified as Nonquit Pond Dam, State Identification Number 396, located approximately 816 feet west of the intersection of Main Road and Pond Bridge Road, approximately 70 feet north of Pond Bridge Road, in the town of Tiverton, Rhode Island (“Dam 396”);
- (c) A dam identified as Harold E. Watson Reservoir Dam, State Identification Number 485, located approximately 5,700 feet north of the intersection of Peckham Road and West Main Road, approximately 2,300 feet east of West Main Road, in the town of Tiverton, Rhode Island (“Dam 485”);
- (d) A dam identified as Sisson Pond Dam, State Identification Number 580, located approximately 1,500 feet east of the intersection of Union Street and Jepson Lane, approximately 1,300 feet south of Union Street, in the town of Portsmouth, Rhode Island (“Dam 580”);
- (e) A dam identified as St. Mary's Pond Dam, State Identification Number 581, located approximately 4,000 feet east of the intersection of West Main Road and Union Street, approximately 1,300 feet south of Union Street, in the town of Portsmouth, Rhode Island (“Dam 581”);

- (f) A dam identified as Nelson Pond Dam, State Identification Number 582, located approximately 1,180 feet northwest of the intersection of Paradise Avenue and Hanging Rock Road, approximately 554 feet east of Paradise Avenue, in the town of Middletown, Rhode Island (“Dam 582”);
- (g) A dam identified as Gardiner Pond Dam, State Identification Number 583, located immediately northeast of the intersection of Hanging Rock Road and Sachuest Point Road, approximately 157 feet east of Hanging Rock Road, in the town of Middletown, Rhode Island (“Dam 583”);
- (h) A dam identified as Easton Pond North Dam, State Identification Number 584, located approximately at the intersection of Valley Road and Aquidneck Avenue, approximately 270 feet west of Aquidneck Avenue, in the town of Middletown, Rhode Island (“Dam 584”); and
- (i) A dam identified as Easton Pond South Dam, State Identification Number 585, located approximately 1,300 feet west of the intersection of Aquidneck Road and Memorial Boulevard, approximately 100 feet north of Memorial Boulevard, on the line between the town of Middletown and the city of Newport, Rhode Island (“Dam 585”)

Collectively, the 9 dams are referred to as the “Dams”.

- (2) The Respondent owns the Dams.
- (3) On 23 March 2011, the DEM received registration forms from the Respondent identifying it as the owner of Dam 395, Dam 396, Dam 485, and Dam 581.
- (4) On 9 September 2011, the DEM received registration forms from the Respondent identifying it as the owner of Dam 580, Dam 582, Dam 583, Dam 584, and Dam 585.
- (5) Dam 396 is classified by the DEM as Significant Hazard.
- (6) Dam 395, Dam 485, Dam 580, Dam 581, Dam 582, Dam 583, Dam 584 and Dam 585 are classified by the DEM as High Hazard.
- (7) The Dams were inspected on the following dates:
  - (a) On 22 August 2013, Dam 584 and Dam 585;
  - (b) On 28 August 2013, Dam 582 and Dam 583;
  - (c) On 4 September 2013, Dam 396 and Dam 485;
  - (d) On 12 September 2013, Dam 580 and Dam 581; and
  - (e) On 18 September 2013, Dam 395.

Collectively, the 9 inspections are referred to as the "Inspections".

- (8) The Inspections revealed the following:
- (a) For Dam 584, vegetation on the upstream side and downstream side of the embankment that did not allow a proper inspection to be performed, vegetation within the auxiliary spillway channel that may inhibit flow, a primary spillway with missing stones, voids, displacement of concrete sections, and significant cracking of concrete in numerous locations, and an auxiliary spillway with significant cracking of concrete, missing mortar, open joints, and a stone block cap that has fallen from the top of the wall into the channel. The inspector was unable to determine whether the low level outlet is operable;
  - (b) For Dam 585, vegetation on the upstream side and downstream side of the embankment that did not allow a proper inspection to be performed;
  - (c) For Dam 582, vegetation on the upstream side and downstream side of the embankment and vegetation within the primary spillway and auxiliary spillway that did not allow a proper inspection to be performed and an auxiliary spillway with cracked/broken concrete, leaning wall, missing concrete caps and reports of leakage during elevated water levels;
  - (d) For Dam 583, vegetation on the upstream side, crest and downstream side of the embankment that did not allow a proper inspection to be performed and suspected erosion of the toe of the downstream embankment adjacent to Maidford Brook near station 52+80;
  - (e) For Dam 396, vegetation along the left abutment that did not allow a proper inspection to be performed and an inoperable low level gate;
  - (f) For Dam 485, vegetation on the upstream side and downstream side of the embankment and vegetation within the auxiliary spillway that did not allow a proper inspection to be performed and vegetation within the primary spillway and auxiliary spillway channels that may inhibit flow. The inspector was unable to determine whether the low level outlet is operable;
  - (g) For Dam 580, vegetation on the upstream side and downstream side of the embankment and vegetation within the primary spillway that did not allow a proper inspection to be performed and vegetation within the primary spillway channel that may inhibit flow;
  - (h) For Dam 581, vegetation on the upstream side and downstream side of the embankment and vegetation within the primary spillway that did not allow a proper inspection to be performed and vegetation within the primary spillway channel that may inhibit flow; and

- (i) For Dam 395, vegetation on the upstream side and downstream side of the embankment that did not allow a proper inspection to be performed and vegetation within the primary spillway channel that may inhibit flow.
- (9) The DEM considers the Dams unsafe for the following reasons:
- (a) For Dam 395, Dam 485, Dam 580, Dam 581 and Dam 584, because of vegetation that inhibits a proper inspection and vegetation that may inhibit flow;
  - (b) For Dam 582, Dam 583 and Dam 585, because of vegetation that inhibits a proper inspection;
  - (c) For Dam 396, because of vegetation that inhibits a proper inspection and an inoperable low level gate.
- (10) The DEM considers that Dam 582, Dam 583 and Dam 584 may be unsafe for the following reasons:
- (a) For Dam 582, because of the deteriorated auxiliary spillway;
  - (b) For Dam 583, because of the suspected erosion along the toe of the embankment adjacent to Maidford Brook near station 52+80; and
  - (c) For Dam 584, because of the deteriorated primary spillway and auxiliary spillway.

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 4(A)** – requiring the owner of a high hazard dam or a significant hazard dam to maintain the dam in a safe condition.
- (2) **DEM's Dam Safety Regulations, Rule 11(A)(2)** – requiring the owner of a high hazard dam or a significant hazard dam to perform a visual inspection of the dam whenever the DEM determines one is necessary.
- (3) **DEM's Dam Safety Regulations, Rule 11(A)(4)** – requiring the owner of a high hazard dam or a significant hazard dam to perform a detailed investigation of the dam whenever the findings of a visual inspection reveals 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 90 days of receipt of the Notice of Violation (“NOV”)**, cut or remove the vegetation from the areas of the Dams as described in Paragraph B(8) above 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.
- (2) **Within 90 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 180 days of receipt of the NOV**, the Dam Engineer must complete the following in accordance with the DEM’s Dam Safety Regulations, Rule 11C:
  - (a) A visual inspection of the Dams. For Dam 485 and Dam 584, assess the operability of the low level outlet;
  - (b) A detailed investigation of Dam 582 to assess the auxiliary spillway;
  - (c) A detailed investigation of Dam 583 near station 52+80 to assess suspected erosion at the toe of the downstream embankment and the flow from Maidford Brook along the toe of the downstream embankment;
  - (d) A detailed investigation of Dam 584 to assess the primary spillway and auxiliary spillway; and
  - (e) Submit reports of the inspection/investigation findings to the DEM. The reports must specify the actions (in addition to the actions ordered in the NOV) necessary to return the dams to a safe condition and include a schedule to complete the work. For any proposed repairs, the reports must include an application prepared in accordance with the DEM’s Dam Safety Regulations, Rule 10B.
- (4) **Within 270 days of receipt of the NOV**, the Dam Engineer must submit an application to the DEM in accordance with the DEM’s Dam Safety Regulations, Rule 10B to repair the inoperable low level outlet of Dam 396. The application must include a schedule to complete the work.

- (5) The reports, applications, and/or schedules required 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.
- (6) 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's 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 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  
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'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:

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 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 the 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 (vi) and 42-17.6-4(b) and (c).
- (5) 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 at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7400.

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  
DEM Office of Compliance and Inspection

Date: \_\_\_\_\_

**CERTIFICATION**

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

City of Newport  
c/o Joseph J. Nicholson, Jr., Interim City Manager  
43 Broadway  
Newport, RI 02840

by Certified Mail.

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