

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Leo A. Plouffe**

**FILE NO.: DAMS STATE I.D. 016  
and OCI-DAMS-15-1**

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 the DEM's jurisdiction.

B. Facts

- (1) The property is a dam identified as Pascoag Reservoir Upper Dam, State Identification Number 016, located approximately 1,800 feet south of the intersection of High Street and Rock Avenue, approximately 440 feet west of Rock Avenue, Assessor's Plat 191, Lot 80 in the town of Burrillville, Rhode Island ("Dam 016").
- (2) Dam 016 is comprised of the main dam and the west dike (the "West Dike")
- (3) The Respondent owns a section of the West Dike.
- (4) On 31 March 2009, the DEM issued a letter to the Respondent advising the Respondent that the DEM had classified the West Dike as High Hazard (the "Hazard Classification").
- (5) The Respondent filed an appeal of the Hazard Classification (the "Appeal") to the DEM's Administrative Adjudication Division (the "AAD").
- (6) On 18 April 2015, Dam 016 was inspected. The inspection revealed the following in the section of the West Dike owned by the Respondent:
  - (a) Vegetation (in the form of thick leaf cover) on the downstream side of the embankment that did not allow a proper inspection to be performed;
  - (b) Partially collapsed sections of a boulder wall on the upstream side of the embankment (the "Collapsed Wall"); and

- (c) Bulges present along the boulder wall on the downstream side of the embankment and a failed section of the wall resulting in sloughing of the crest (the "Failed Wall").
- (7) On 22 September 2015, the AAD hearing officer issued a Final Order of Default on the Appeal. The Final Order of Default upheld the Hazard Classification.
- (8) The DEM considers the section of the West Dike that is owned by the Respondent unsafe because of vegetation that inhibits a proper inspection.
- (9) The DEM considers that the section of the West Dike that is owned by the Respondent may be unsafe because of the Collapsed Wall and Failed Wall.

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 high hazard dam to maintain the dam in a safe condition.
- (2) **DEM's Dam Safety Regulations, Rule 11(A)(4)** - requiring the owner of a high 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 NOV**, remove the vegetation from the areas of the West Dike as described in Paragraph B(6)(a). Removal shall be in sufficient amounts to allow a thorough visual inspection to be performed.
- (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 section of the West Dike that is owned by the Respondent;
  - (b) A detailed investigation of the section of the West Dike that is owned by the Respondent to assess the Collapsed Wall and the Failed Wall; and

- (c) Submit a report of the inspection/investigation findings to the DEM. The report must specify the actions (in addition to the actions ordered in the NOV) necessary 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 DEM's Dam Safety Regulations, Rule 10B.
- (4) 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 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.
- (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's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections **Error! Reference source not found.** 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 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 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 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 the town 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 at 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  
DEM Office of Compliance and Inspection

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

CERTIFICATION

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

Leo A. Plouffe  
113 Rock Avenue  
Pascoag, RI 02859

by Certified Mail.

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