

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

IN RE: Nine Howard Development LLC

FILE NO.: Dam State I.D. 371

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 subject property is a dam identified as Pearce Pond Dam, State Identification Number 371, located immediately southwest of Howard Avenue, southeast of its intersection with Cedar Street and northwest of its intersection with Mumford Street, in the town of Coventry, Rhode Island (“Dam 371”).
- (2) The Respondent owns Dam 371.
- (3) Dam 371 is classified by DEM as High Hazard.
- (4) On June 7, 2010 Dam 371 was inspected. The inspection revealed the following:
 - (a) Vegetation on the crest to the left of the spillway and on the downstream side left of the spillway did not allow a proper inspection to be performed;
 - (b) Tree and brush growth on the right side of the spillway that may reduce discharge capacity; and
 - (c) An inoperable low level outlet.
- (5) In a certified letter from DEM to the Respondent dated May 22, 2012, which was delivered on May 25, 2012, DEM forwarded a registration form for Dam 371. The Respondent was required to complete and return the form to DEM by June 8, 2012.
- (6) DEM considers Dam 371 unsafe for the following reasons:

- (a) Excessive vegetation that inhibits a proper inspection;
 - (b) Vegetation that may reduce the discharge capacity of the spillway; and
 - (c) An inoperable low level outlet.
- (7) As of the date of this Notice of Violation (“NOV”), the Respondent has not provided the registration form to 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 high 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 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 fourteen (14) days of receipt of the NOV**, complete and submit to DEM the enclosed registration form.
- (2) **Within ninety (90) days of receipt of the NOV**, cut or remove the vegetation from the downstream embankment and crest of Dam 371 in accordance with the Dam Safety Regulations, Rule 10A. 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.
- (3) **Within ninety (90) days of receipt of the NOV**, cut or remove the vegetation on the right side of the spillway such that it will not reduce the discharge capacity of the spillway. DEM shall be notified upon commencement and completion of this work.
- (4) **Within one hundred eighty (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, to complete a visual inspection of Dam 371 in accordance with the Dam Safety Regulations, Rule 11C and submit a report of the inspection findings to 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 371, the report must include an application prepared in accordance with the Dam Safety Regulations, Rule 10B.

- (5) **Within one hundred eighty (180) days of receipt of the NOV**, retain a professional engineer fully registered in the State of Rhode Island, who is experienced with design, construction and repair, to submit an application to DEM in accordance with the Dam Safety Regulations, Rule 10B to repair the low level outlet for Dam 371. The application must include a schedule to complete the work.
- (6) The report, applications, and/or schedules required in Sections D.4 and D.5 above shall be subject to DEM review and approval. Upon review, the DEM shall provide written notification to the Respondent either granting formal approval or stating the deficiencies therein. **Within fourteen (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.
- (7) Commence work specified in the schedule approved by the DEM within twenty (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 DEM's Administrative Adjudication Division, at the following address, within twenty (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, 2ND 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, 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 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) 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, please have your attorney contact Richard M. Bianculli Jr. at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy of the DEM 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

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:

Nine Howard Development, LLC
c/o Amy T.M. Oakley, Esquire, Registered Agent
10 Weybosset Street
Providence, RI 02903

by Certified Mail.
