

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

**IN RE: Citizens for the Preservation of
Waterman Lake, Inc.**

FILE NO.: Dam State I.D. 111

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 Waterman Lake Dam, State Identification Number 111, located approximately 2,700 feet southwest of the intersection of Putnam Pike (Route 44) and West Greenville Road, immediately west of West Greenville Road, Assessor’s Map 44, Lot 6, in the town of Smithfield, Rhode Island (“Dam 111”).
- (2) The Respondent owns Dam 111.
- (3) Dam 111 is classified by DEM as High Hazard.
- (4) In a certified letter from the DEM to the Respondent dated October 24, 2008, which was delivered on November 5, 2008, the DEM forwarded a registration form for Dam 111 (the “Registration”). The Respondent was required to complete and return the Registration to DEM by November 19, 2008.
- (5) On August 2, 2012, Dam 111 was inspected (the “Inspection”). The Inspection revealed the following conditions:
 - (a) Vegetation and vegetation debris on the downstream embankment left of the low level outlet of the Main dam that did not allow a proper inspection to be performed;
 - (b) Vegetation and vegetation debris on the upstream embankment and downstream embankment right of Pine Ledge Road on the section of the dam identified in the Inspection report as Pine Ledge to Greenville (“Pine Ledge to Greenville Section”) that did not allow a proper inspection to be performed;

- (c) Vegetation and vegetation debris on the downstream embankment on the section of the dam identified in the Inspection report as Spillway Section that did not allow a proper inspection to be performed; and
 - (d) The drainage trench along the toe of the downstream embankment left of Pine Ledge Road and right of Pine Ledge Road on the Pine Ledge to Greenville Section was clogged with vegetation and vegetation debris.
- (6) DEM considers Dam 111 unsafe for the following reasons:
- (a) Excessive vegetation and vegetation debris prevents proper inspection; and
 - (b) A clogged drainage trench.
- (7) As of the date of this Notice of Violation (“NOV”), the Respondent has not provided the Registration 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 14 days of receipt of the NOV**, complete and submit to DEM the enclosed registration form.
- (2) **Within 90 days of receipt of the NOV**, remove the vegetation and vegetation debris from the areas of Dam 111 identified in Section B.5 above.
- (3) **Within 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, and have the engineer complete a visual inspection of Dam 111 in accordance with the DEM’s Dam Safety Regulations, Rule 11C and submit a report of the inspection findings to 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 to Dam

111, the report must include an application prepared in accordance with the DEM's Dam Safety Regulations, Rule 10B.

- (4) The report and application required in Section D.3 above shall be subject to 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 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 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) An original signed copy of this NOV is being forwarded to the town of Smithfield 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.
- (6) 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, you may contact (or if you are represented by an attorney, 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 Paul Guglielmino of the DEM 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

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:

Citizens for the Preservation of Waterman Lake, Inc.
c/o Bruce R. Carey, Registered Agent
391 Putnam Pike
P.O. Box 82
Harmony, RI 02829

by Certified Mail.
