

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

IN RE: Tillinghast Holding Company, LLC

**FILE NO.: Dam State I.D. 572
and OCI-DAMS-13-85 and 15-8**

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 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 Wilbur Pond Dam, State Identification Number 572, located approximately 4,500 feet north of the intersection of George Washington Trail and Putnam Pike, approximately 2,000 linear feet west of George Washington Trail, Assessor's Plat 259, Lot 1, in the town of Burrillville, Rhode Island ("Dam 572").
- (2) Tillinghast Holding Company, LLC owns Dam 572.
- (3) On 13 July 2011, the DEM received a registration form from John Tillinghast as the Chief Engineer of Tillinghast Holding Company, LLC identifying Tillinghast Holding Company, LLC as the owner of Dam 572.
- (4) Dam 572 is classified by the DEM as High Hazard.
- (5) On 9 October 2013 and 26 April 2015, Dam 572 was inspected. The inspections revealed the following:
 - (a) On 9 October 2013, seepage of 10 gallons per minute at the toe of the retaining structure at the primary spillway outlet with an accumulation of fine to course sand at the seepage areas (the "Seepage");
 - (b) On 26 April 2015, vegetation on the downstream side of the embankment that did not allow a proper inspection to be performed (the "Vegetation"); and

- (c) On 26 April 2015, many loose or missing stones on the downstream headwall of the primary spillway (the "Headwall").
- (6) During the 9 October 2013 inspection, the inspector asked Mr. Tillinghast about the operability of the low level outlet. Mr. Tillinghast stated that the gate is operable, however, he refrains from operating the valve as he is concerned about deterioration of the culvert pipe.
- (7) The DEM considers Dam 572 unsafe because of the Vegetation.
- (8) The DEM considers that Dam 572 may be unsafe because of the Seepage and Headwall.

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 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 facts and 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 Dam 572 as described in Section B(5)(b) 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 Dam 572, which must include an evaluation of the operability of the low level outlet;

- (b) A detailed investigation of Dam 572 to assess the Seepage and Headwall; 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 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, 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'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, 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 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) An original signed copy of the NOV is being forwarded to the town of Burrillville 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) 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:

Tillinghast Holding Company, LLC
c/o William W. Corcoran, Esquire, Registered Agent
31 America's Cup Avenue
Newport, RI 02840

by Certified Mail.
