

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

IN RE: Town of South Kingstown

FILE NO.: Dam State I.D. 549

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 Asa Pond Dam, State Identification Number 549, located approximately 1,160 feet southeast of the intersection of Curtis Corner Road and Asa Pond Road and approximately 780 feet east of Asa Pond Road in the town of South Kingstown, Rhode Island (“Dam 549”).
- (2) The Respondent owns Dam 549.
- (3) Dam 549 is classified by the DEM as High Hazard.
- (4) On 31 July 2013 Dam 549 was inspected. The inspection revealed the following:
 - (a) The primary spillway approach, the channel downstream of the spillway and the channel downstream of the low level outlet were overgrown with vegetation that may impact spillway capacity and proper functioning of the low level outlet; and
 - (b) Excessive vegetation on the downstream slope of the embankment within 15 feet of the toe of the dam did not allow a proper inspection to be performed.
- (5) DEM considers Dam 549 unsafe because excessive vegetation inhibits proper inspection and may impede the flow of water in the primary spillway and low level outlet.

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) **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.

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 excess vegetation from the downstream embankment; the approach to the primary spillway; the downstream channel for the primary spillway and the downstream channel for the low level outlet of Dam 549 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 the completion of the work ordered in Section D.1 above**, 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 549 in accordance with the DEM’s Dam Safety Regulations, Rule 11C and submit a report of the inspection findings to the 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 549, the report must include an application prepared in accordance with the DEM’s Dam Safety Regulations, Rule 10B.
- (3) The report and application required in Section D.2 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.
- (4) Upon approval of the application by the DEM, complete all 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 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, 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:

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 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. 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, 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:

Town of South Kingstown
c/o Stephen A. Alfred, Town Manager
180 High Street
Wakefield, RI 02879

by Certified Mail.
