

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

IN RE: Boone Lake Dam Management District

FILE NO.: Dam State I.D. 219

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 Boone Lake Dam, State Identification Number 219, located approximately 5600 feet north of the intersection of Ten Rod Road (Route 165) and Nooseneck Hill Road (Route 3), approximately 329 feet north of the intersection of Boone Lake Road and West Shore Road, in the town of Exeter, Rhode Island (“Dam 219”).
- (2) The Respondent owns Dam 219.
- (3) The DEM classifies Dam 219 as High Hazard.
- (4) On 14 August 2013 Dam 219 was inspected. The inspection revealed the following:
 - (a) Heavy vegetation on the downstream wall and bench of the embankment, the downstream toe of the embankment and the spillway that did not allow a proper inspection to be performed;
 - (b) Sand and vegetation deposited in the spillway approach; and
 - (c) Leakage with sediment at the right wall downstream of the spillway.
- (5) The DEM considers Dam 219 unsafe because of the heavy vegetation that inhibits a proper inspection and the sand and vegetation in the spillway approach that may affect the capacity of the spillway.

- (6) The DEM considers that Dam 219 may be unsafe because of the leakage with sediment at the right wall downstream of the spillway.

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)(2)** – requiring the owner of a high hazard dam to perform a visual inspection of the dam as required by the DEM.
- (3) **DEM's Dam Safety Regulations, Rule 11(A)4** – requiring the owner of a high hazard dam to perform a detailed investigation whenever the DEM determines through a visual inspection 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**, cut or remove the vegetation from the downstream wall and bench of the embankment, the downstream toe of the embankment and the spillway of Dam 219 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 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 219 in accordance with the DEM's Dam Safety Regulations, Rule 11C and submit a report of the inspection findings to the DEM. The inspection must include an assessment of the leakage and sediment observed at the right wall downstream of the spillway. 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 219, the report must include an application prepared in accordance with the DEM's Dam Safety Regulations, Rule 10B.
- (3) The report, application, and/or schedule 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 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 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) An original signed copy of this NOV is being forwarded to the town of Exeter 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 Bianculli 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:

Boone Lake Dam Management District
c/o Gary Casaly, Chairman of the Board of Boone Lake Dam
Management District
P.O. Box 444
Wyoming, RI 02898-0444

by Certified Mail.
