

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

IN RE: Breakwater Nature Conservancy

FILE NO.: Dam State I.D. 109

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 Stillwater Pond Dam, State Identification Number 109, located north of Capron Road, south of the intersection of Thurber Boulevard and Stillwater Road, and southeast of Washington Highway, in the town of Smithfield, Rhode Island (“Dam 109”);
- (2) The Respondent owns Dam 109.
- (3) Dam 109 is classified by DEM as Significant Hazard.
- (4) On May 20, 2010, Dam 109 was inspected. The inspection revealed the following:
 - (a) The low level gate is inoperable;
 - (b) Overgrown vegetation on the upstream side, crest and downstream side of the main embankment and the dike embankment did not allow a proper inspection to be performed;
 - (c) Inadequate lighting in the basement of the southern most building that abuts the downstream side of the main embankment (the “building”) did not allow a proper inspection to be performed; and
 - (d) Trees and other vegetation in the channel downstream of the spillway (the “spillway channel”) are inhibiting flow.
- (5) DEM considers Dam 109 unsafe for the following reasons:

- (a) Overgrown vegetation that inhibits a proper inspection;
- (b) Inadequate lighting in the building that inhibits a proper inspection;
- (c) Trees and vegetation in the spillway channel that inhibits flow; and/or
- (d) An inoperable low level gate.

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 significant 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 ninety (90) days of receipt of the NOV**, cut or remove improper vegetation on Dam 109 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.
- (2) **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 109 in accordance with the 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 109, the report must include an application prepared in accordance with the Dam Safety Regulations, Rule 10B.
- (3) **Within one hundred eighty (180) days of receipt of this 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 gate for Dam 109. The application must include a schedule to complete the work.
- (4) The reports, applications, and/or schedules required in Sections D.2 and D.3 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

- (5) Commence work specified in the schedule approved by the Director within twenty days of approval (unless otherwise expressly authorized by the Director 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
235 Promenade Street, 3RD Floor
Providence, RI 02908-5767

- (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, 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:

Breakwater Preservation Conservancy
c/o Andrew Bockstael, Registered Agent
122 Torrey Road
Wakefield, RI 02879

by Certified Mail.
