

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

IN RE: Town of Smithfield

FILE NO.: Dam State I.D. 126

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 Georgiaville Pond Dam, State Identification Number 126, located north and west of Stillwater Road and east of Farnum Pike in the town of Smithfield, Rhode Island (“Dam 126”).
- (2) The Respondent owns a portion of Dam 126.
- (3) Dam 126 is classified by DEM as High Hazard.
- (4) On May 20, 2010, Dam 126 was inspected. The inspection revealed the following:
 - (a) Dense brush on the upstream slope and downstream slope of the embankment did not allow a proper inspection to be performed; and
 - (b) Vegetation on the downstream side of the portion of the dike owned by the Respondent did not allow a proper inspection to be performed.
- (5) The Respondent’s operator indicated that the low level gates are operational and are exercised routinely; however, the operator did not exercise the gates at the time of the inspection.
- (6) DEM considers Dam 126 unsafe because the vegetation present on the embankment and dike inhibits a proper inspection.

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 ninety (90) days of receipt of this Notice of Violation (“NOV”)**, cut or remove improper vegetation on Dam 126 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 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 126 in accordance with the Dam Safety Regulations, Rule 11C and submit a report of the inspection findings to DEM. The inspection must include an assessment of the operability of the low level gates. 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 126, the report must include an application prepared in accordance with the Dam Safety Regulations, Rule 10B.
- (3) The report and application required in Section D.2 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 stating the deficiencies therein. **Within fourteen days (unless a longer time is specified) of receiving a notification of deficiencies**, the Respondent shall submit to the DEM a modified application or additional information necessary to correct the deficiencies.

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:

Dennis G. Finlay, Town Manager
Town of Smithfield
64 Farnum Pike
Esmond, Rhode Island 02917

by Certified Mail.
