

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

**IN RE:   Town of Johnston**

**FILE NO.: Dam State I.D. 168, 169,  
170 and 171**

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 properties are as follows:

- (a)    a dam identified as Oak Swamp Dam, State Identification Number 168, located west of Reservoir Avenue, south of Hartford Avenue and north of Shore Drive, in the town of Johnston, Rhode Island (“Dam 168”);
- (b)    a dam identified as Almy Dam, State Identification Number 169, located north of Central Avenue, west of route I-295 and east of Reservoir Avenue, in the town of Johnston, Rhode Island (“Dam 169”);
- (c)    a dam identified as Simmons Upper Dam, State Identification Number 170, located east of Taylor Road, north of Plainfield Pike, and west of route I-295, in the town of Johnston, Rhode Island (“Dam 170”); and
- (d)    a dam identified as Simmons Lower Dam, State Identification Number 171, located north of Plainfield Pike, east of Taylor Road and west of route I-295, in the town of Johnston, Rhode Island (“Dam 171”).

Collectively, the four dams are referred to as the “Dams”.

- (2)    The Respondent owns the Dams.
- (3)    The Dams are classified by DEM as High Hazard.
- (4)    In a certified letter from DEM to the Respondent dated September 18, 2008, which the Respondent received on September 22, 2008, DEM forwarded registration forms for the Dams. The Respondent was required to complete and return the forms to DEM by October 7, 2008.

- (5) DEM visually inspected the Dams as follows:
- (a) On June 4, 2010, Dam 168 was inspected. The inspection revealed the following:
    - (i) The low level gate was inoperable; and
    - (ii) Severe erosion in three areas on the embankment crest.
  - (b) On July 28, 2010, Dam 169 was inspected. The inspection revealed the following:
    - (i) Dense vegetation, including brush, saplings and trees, were growing on much of the embankment and downstream embankment toe and did not allow a proper inspection to be performed;
    - (ii) Severe erosion on the embankment (upstream slope and crest) near the low level gate outlet;
    - (iii) Approximately eighty five percent of the length of the spillway was filled with sediment, leaves, brush, saplings and trees, and no longer resembled or properly functioned as a spillway; and
    - (iv) The low level gate was inoperable.
  - (c) On September 9, 2010, Dam 170 was inspected. The inspection revealed the following:
    - (i) Dense vegetation, including brush and trees, were growing on much of the embankment and downstream embankment toe and did not allow a proper inspection to be performed; and
    - (ii) The low level gate was inoperable.
  - (d) On September 9, 2010, Dam 171 was inspected. The inspection revealed the following:
    - (i) Dense vegetation, including brush and trees, were growing on much of the embankment and downstream embankment toe and did not allow a proper inspection to be performed;
    - (ii) About half of the length of the spillway was filled with sediment and vegetation and the adjacent embankment was severely eroded; and
    - (iii) The low level gate was inoperable.
- (6) DEM considers the Dams unsafe for the following reasons:

- (a) Dense vegetation that inhibits a proper inspection;
  - (b) Severe erosion on the embankments;
  - (c) An improperly functioning spillway; and/or
  - (d) An inoperable low level gate.
- (7) As of the date of this Notice of Violation (“NOV”), the Respondent has not provided the registration forms to DEM.

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
- (2) **Dam Safety Regulations, Rule 8** – requiring the owner of a dam to provide a fully completed registration form to DEM.

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 fourteen days of receipt of the NOV**, complete and submit to DEM the enclosed registration forms.
- (2) **Within ninety days of receipt of the NOV**, cut or remove improper vegetation on Dam 169, Dam 170 and Dam 171 in accordance with the Dam Safety Regulations, Rule 10A. Cutting or removal shall be in sufficient amounts to allow thorough visual inspections to be performed. DEM shall be notified upon commencement and completion of this work.
- (3) **Within one eighty 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 169, Dam 170 and Dam 171 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 169, Dam 170, or Dam 171, the report must include an application prepared in accordance with the Dam Safety Regulations, Rule 10B.

- (4) **Within one hundred eighty 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 make the following repairs to the Dams:
- (a) Dam 168 – low level gate and erosion areas on the embankment crest
  - (b) Dam 169 – low level gate, erosion areas on the embankment (upstream slope and crest), and spillway
  - (c) Dam 170 – low level gate
  - (d) Dam 171 – low level gate and spillway

Each application must include a schedule to complete the work.

- (5) The reports, applications, and/or schedules required in Sections D.3 and D.4 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 report, application, and/or schedule or additional information necessary to correct the deficiencies.
- (6) 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 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, 3<sup>RD</sup> 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, 4<sup>TH</sup> 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, 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 David E. Chopy of the DEM 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

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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:

Honorable Joseph Polisena, Mayor  
Town of Johnston  
1385 Hartford Avenue  
Johnston, Rhode Island 02919

by Certified Mail.

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