

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

**IN RE: Town of Portsmouth**

**FILE NO.: Dam State I.D. 761**

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 Melville Pond Dam, State Identification Number 761, located approximately 300 feet southeast of the intersection of King Charles Drive and West Main Road, approximately 3,000 feet west of West Main Road in the town of Portsmouth, Rhode Island (“Dam 761”).
- (2) The Respondent owns Dam 761.
- (3) Dam 761 is classified by DEM as Significant Hazard.
- (4) On September 1, 2012, Dam 761 was inspected. The inspection revealed the following:
  - (a) Excessive vegetation along the upstream and downstream embankments and the crest that did not allow a proper inspection to be performed; and
  - (b) An inoperable low level gate.
- (5) DEM considers Dam 761 unsafe for the following reasons:
  - (a) Excessive vegetation inhibits proper inspection; and
  - (b) 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 one hundred and twenty (120) days of receipt of this Notice of Violation (“NOV”)**, remove the vegetation from the upstream and downstream embankments and the crest of Dam 761. Trees greater than six (6) inches in diameter (as measured two (2) feet above the ground level) must only be cut under the supervision of a professional engineer fully registered in the State of Rhode Island, who is experienced with dam inspections, maintenance and repair. The Respondent shall obtain a written report from the engineer, if the engineer determines that the cutting or removal is not a threat to the integrity of the dam and keep a copy of the report on file.
- (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, and have the engineer complete a visual inspection of Dam 761 in accordance with the DEM’s 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 761, the report must include an application prepared in accordance with the DEM’s 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 DEM’s Dam Safety Regulations, Rule 10B to repair the low level gate. The application must include a schedule to complete the work.
- (4) The report and applications 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 stating the deficiencies therein. **Within fourteen (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.
- (5) Commence work specified in the schedule approved by the DEM within twenty (20) days of approval (unless otherwise expressly authorized by the DEM 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  
One Capitol Hill, 2<sup>ND</sup> 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 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, 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 Portsmouth  
c/o John C. Klimm, Town Administrator  
2200 East Main Road  
Portsmouth, RI 02871

by Certified Mail.

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