

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

**IN RE: Richard A. Fenner  
Kathleen M. Fenner**

**FILE NOs.: Dam State I.D. 320  
and OCI-DAMS-13-82 and 15-6**

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 parties ("Respondents") have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) The property is a dam identified as Stone Pond Dam, State Identification Number 320, located approximately 2,400 feet south west of the intersection of Atwood Avenue and Plainfield Pike, approximately 220 feet south of Plainfield Pike, Assessor's Plat 37, Lot 6 in the city of Cranston, Rhode Island ("Dam 320").
- (2) The Respondents own Dam 320.
- (3) On 7 November 2008, the DEM received a registration form that was signed by the Respondents identifying them as the owner of Dam 320.
- (4) Dam 320 is classified by the DEM as High Hazard.
- (5) On October 2, 2013 and April 22, 2015, Dam 320 was inspected. The inspections revealed the following:
  - (a) Large trees (fallen) and brush at the entrance to the auxiliary spillway that inhibits flow;
  - (b) Severe seepage and potential sediment transport below the auxiliary spillway (the "Seepage");
  - (c) Partially collapsed stone masonry wall on the downstream side of the embankment ("Collapsed Wall"); and
  - (d) Sliding and/or sloughing of the downstream side of the embankment ("Sliding/Sloughing").

- (6) The DEM considers Dam 320 unsafe because of the large trees and brush that inhibit flow through the auxiliary spillway.
- (7) The DEM considers that Dam 320 may be unsafe because of the Seepage, Collapsed Wall and Sliding/Sloughing.

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 4(A)** – 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)(4)** – requiring the owner of a high hazard dam to perform a detailed investigation of the dam whenever the findings of a visual inspection reveals 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 Notice of Violation ("NOV")**, cut and remove the large trees and brush from the entrance to the auxiliary spillway to allow for the free passage of water over the spillway. The DEM shall be notified upon commencement and completion of this work.
- (2) **Within 90 days of receipt of the NOV**, retain a professional engineer fully registered in the State of Rhode Island, who is experienced with dam inspections, design, construction and repair (the "Dam Engineer").
- (3) **Within 180 days of receipt of the NOV**, the Dam Engineer must complete the following in accordance with the DEM's Dam Safety Regulations, Rule 11C:
  - (a) A detailed investigation of Dam 320 to assess the Seepage, Collapsed Wall and Sliding/Sloughing; and
  - (b) Submit a report of the investigation findings to the 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, the report must include an application prepared in accordance with the DEM's Dam Safety Regulations, Rule 10B.

- (4) The report, application, and/or schedule required 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.
- (5) Commence work specified in the schedule approved by the DEM within 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'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 the 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'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:

Joseph J. LoBianco, 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 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 the 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 (vi) and 42-17.6-4(b) and (c).
- (5) The 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 Joseph J. LoBianco at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy of the DEM's 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

By: \_\_\_\_\_  
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:

Richard A. Fenner  
131 Knighthawk  
Irvine, CA 92604

Kathleen M. Fenner  
131 Knighthawk  
Irvine, CA 92604

by Certified Mail.

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