

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: LAKE WIONKHIEGE IMPROVEMENT FILE NOs.: Dam State I.D. 121 and
ASSOCIATION OCI-DAMS-17-5**

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 the DEM's jurisdiction.

B. Facts

- (1) The property is a dam identified as Sprague Lower Reservoir Dam, State Identification Number 121, located approximately 250 feet southwest of the intersection of Tomahawk Trail and Arrowhead Trail in Smithfield (“Dam 121”).
- (2) Respondent owns Dam 121.
- (3) Dam 121 is classified by the DEM as High Hazard.
- (4) Respondent is registered with the Rhode Island Secretary of State as a Non-Profit Corporation. Lois Caplinger (“Caplinger”) is listed as the President and Registered Agent for the corporation.
- (5) On 5 October 2013, the DEM hand delivered a letter dated 9 May 2013 to Caplinger (the “May Letter”), which forwarded a registration form for Dam 121. Respondent was required to complete and return the form to the DEM by 19 October 2013.
- (6) On 4 May 2017, Dam 121 was inspected. The inspection revealed vegetation on the downstream embankment that did not allow a proper inspection to be performed.
- (7) The DEM considers Dam 121 unsafe because of the finding described in Section B(6) above.
- (8) As of the date of this Notice of Violation (“NOV”), Respondent has not provided the registration form to the 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) **DEM's Rules and Regulations for Dam Safety (the "Dam Safety Regulations"), Rule 4A (recently amended to Part 1.6A)** – requiring the owner of a high hazard dam to maintain the dam in a safe condition.
- (2) **DEM's Dam Safety Regulations, Rule 8 (recently amended to Part 1.8A)** – requiring the owner of a dam to provide a fully completed registration form to the 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 14 days of receipt of the NOV**, complete and submit to the DEM the enclosed registration form for Dam 121.
- (2) **Within 90 days of receipt of the NOV**, cut or remove the vegetation from the area of Dam 121 as described in Section B(6) above in accordance with the DEM's Dam Safety Regulations, Part 1.10A. Cutting or removal shall be in sufficient amounts to allow a thorough visual inspection to be performed. The DEM shall be notified upon commencement and completion of this work.
- (3) **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").
- (4) **Within 180 days of receipt of the NOV**, the Dam Engineer must complete a visual inspection of Dam 121 and submit a report of the inspection/investigation findings to the DEM. The report must specify the actions necessary, if any, 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, Part 1.10B.
- (5) 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 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**, 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 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, orders and/or penalties 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 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, 2ND Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. 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 Part 1.7(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, 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 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 this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).

- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) 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 Paul Guglielmino of the DEM's 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

By: _____
David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

LAKE WIONKHIEGE IMPROVEMENT ASSOCIATION
c/o Lois Caplinger, Registered Agent
115 Indian Run Trail
Smithfield, RI 02917

by Certified Mail.
