

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

IN RE: Foster Land Trust

**FILE NOs.: Dam State I.D. 526 and
OCI-DAMS-22-18**

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 Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. FACTS

- (1) The property includes a dam identified as Gorham N. Farm Pond Dam, State Identification Number 526, located approximately 932 feet north of the intersection of Moosup Valley Road and Cucumber Hill Road, approximately 300 feet west of Cucumber Hill Road, Assessor’s Plat 1, Lot 22A in Foster, Rhode Island (“Dam 526”).
- (2) Respondent owns Dam 526.
- (3) Dam 526 is classified by RIDEM as Significant Hazard.
- (4) On 18 October 2014 and 4 April 2022, Dam 526 was inspected. The inspections revealed the following:
 - (a) The emergency spillway was densely overgrown with vegetation and tree clusters that did not allow a proper inspection to be performed and impacts its capacity.
 - (b) The pipe connected to the low-level outlet (“LLO”) discharge pipe is blocked with sediment rendering the LLO inoperable.
- (5) RIDEM considers Dam 526 unsafe because of the findings described in subsection B (4) above.

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) **Rhode Island's *Rules and Regulations for Dam Safety (250-RICR-130-05-1)* ("DS Rules"), Part 1.6(A)** – 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 90 days of receipt of the Notice of Violation ("NOV")**, cut or remove the vegetation from the emergency spillway as described in subsection B (4) above in accordance with the DS Rules, Part 1.10(A). Cutting or removal shall be in sufficient amounts to allow a thorough visual inspection to be performed. RIDEM 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 ("Dam Engineer").
- (3) **Within 180 days of receipt of the NOV**, the Dam Engineer must complete a visual inspection of the emergency spillway (after the vegetation is removed as described in subsection D (1) above) and the LLO and submit a report of the inspection findings to RIDEM. The report must specify the actions necessary, if any, to return the emergency spillway and LLO to a safe condition and include a proposed schedule to complete the work. For any proposed repairs, the report must include an application prepared in accordance with the DS Rules, Part 1.10(B).
- (4) The reports, applications, and/or schedules required above shall be subject to RIDEM's review and approval. Upon review, RIDEM 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 RIDEM a modified report, application, and/or schedule or additional information necessary to correct the deficiencies.
- (5) Commence work specified in the schedule approved by RIDEM within 20 days of approval (unless otherwise expressly authorized by RIDEM in writing to commence work later) 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 RIDEM'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 RIDEM'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
RIDEM - Administrative Adjudication Division
235 Promenade Street, Room 350
Providence, RI 02908-5767
 - (c) Indicate whether you deny the alleged violations. See R.I. Gen. Laws Section 42-17.6-4(b).
 - (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 Rhode Island's *Rules and Regulations for the Administrative Adjudication Division* (250-RICR-10-00-1).
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire
RIDEM - 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 RIDEM'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 regarding 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) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.

- (6) An original signed copy of the NOV is being forwarded to the Town of Foster, Rhode Island wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 46-19-4(c), as amended.
- (7) 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 of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772302 or at joseph.lobianco@dem.ri.gov. All other inquiries should be directed to Stacey Pinto of RIDEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777409 or at stacey.pinto@dem.ri.gov.

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, Administrator
RIDEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Foster Land Trust
c/o Tina W. Freeman, Town Clerk
181 Howard Hill Road
Foster, RI 02825

by Certified Mail.
