

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

**IN RE: Providence Water Supply Board
City of Providence**

**FILE NOs.: State I.D 161, 163, 345,
346, 354 and 361
OCI-DAMS-14-19, 14-20,
14-68, 14-69, 14-70, 14-71
and 16-33**

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 the DEM's jurisdiction.

B. Facts

(1) The properties are as follows:

- (a) A dam identified as Gainer Memorial Dam, State Identification Number 161, located approximately 5,000 feet northeast of the intersection of Howard Avenue and Scituate Avenue, immediately on Scituate Avenue, in the town of Scituate (“Dam 161”);
- (b) A dam identified as Westconnaug Reservoir Dam, State Identification Number 163, located approximately 3,800 feet east of the intersection of Foster Center Road and Plainfield Pike, approximately 1,600 feet south of Plainfield Pike, in the town of Foster (“Dam 163”);
- (c) A dam identified as Jordan Pond Dam, State Identification Number 345, located approximately 336 feet north of the intersection of Field Hill Road and Plainfield Pike, approximately 275 feet east of Plainfield Pike, in the town of Scituate (“Dam 345”);
- (d) A dam identified as Kimball Reservoir Dam, State Identification Number 346, located approximately 1100 feet north of the intersection of Hartford Avenue and Hopkins Avenue, approximately 800 feet east of Hopkins Avenue, in the town of Johnston (“Dam 346”);

- (e) A dam identified as Coomer Dam, State Identification Number 354, located approximately 6,200 feet west of the intersection of Saw Mill Road and Snake Hill Road, approximately 118 feet north of Snake Hill Road, in the town of Gloucester ("Dam 354"); and
- (f) A dam identified as Pine Swamp Dam No. 1, State Identification Number 361, located approximately 770 feet north of the intersection of Brandy Brook Road and Central Avenue, approximately 400 feet east of Central Avenue, in the town of Scituate.

Collectively, the 6 dams are referred to as the "Dams".

- (2) The Respondents own the Dams.
- (3) On 13 July 2016, the DEM received registration forms from the Respondents identifying the Respondents as the owners of the Dams.
- (4) Dam 161 and Dam 163 are classified by the DEM as High Hazard.
- (5) Dam 345, Dam 346, Dam 354 and Dam 361 are classified by the DEM as Significant Hazard.
- (6) The Dams were inspected on the following dates:
 - (a) Dam 161 and Dam 163 - 8 August 2014;
 - (b) Dam 345 - 14 April 2014 and 18 October 2014;
 - (c) Dam 346 - 26 October 2014;
 - (d) Dam 354 - 18 October 2014; and
 - (e) Dam 361 - 25 October 2014.

Collectively, the 6 inspections are referred to as the "Inspections".

- (7) The Inspections revealed the following:
 - (a) For Dam 161, vegetation on the downstream side of the dike that did not allow a proper inspection to be performed;
 - (b) For Dam 163, vegetation on the downstream side of the embankment that did not allow a proper inspection to be performed;
 - (c) For Dam 345, an inoperable low level outlet;
 - (d) For Dam 346, leaf cover on the upstream side of the embankment near the left abutment that did not allow a proper inspection to be performed;

- (e) For Dam 354, leaf cover on the upstream and downstream sides of the embankment and the crest and downstream side of the dike that did not allow a proper inspection to be performed and an inoperable low level gate; and
 - (f) For Dam 361, leaf cover and beaver debris on the upstream side, crest and downstream side of the embankment and spillway that did not allow a proper inspection to be performed.
- (8) The DEM considers the Dams unsafe for the following reasons:
- (a) For Dam 161, Dam 163, Dam 346, Dam 354 and Dam 361, because of the vegetation that inhibits a proper inspection; and
 - (b) For Dam 345 and Dam 354, because of the 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) **DEM’s Rules and Regulations for Dam Safety (the “Dam Safety Regulations”), Rule 4(A)** – requiring the owner of a high hazard dam or 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 areas of Dam 161, Dam 163, Dam 346, Dam 354 and Dam 361 as described in Paragraph B(7) above in accordance with the DEM’s Dam Safety Regulations, Rule 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.
- (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 a visual inspection of Dam 161, Dam 163, Dam 346, Dam 354 and Dam 361 in accordance with the DEM's Dam Safety Regulations, Rule 11C and submit a report of the inspection findings to the DEM. The report must specify the actions (in addition to the actions ordered in the NOV) necessary to return the dams to a safe condition and include a schedule to complete the work. For any proposed repairs, the reports must include an application prepared in accordance with the DEM's Dam Safety Regulations, Rule 10B.
- (4) **Within 270 days of receipt of the NOV**, the Dam Engineer must submit an application to the DEM in accordance with the DEM's Dam Safety Regulations, Rule 10B to repair the inoperable low level outlets of Dam 345 and Dam 354. The application must include a schedule to complete the work.
- (5) The reports, applications, and/or schedules required above shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to the Respondents 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 Respondents 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 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, 4TH 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, 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 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:

City of Providence
c/o Honorable Jorge O. Elorza, Mayor
City Hall
25 Dorrance Street
Providence, RI 02903

Providence Water Supply Board
c/o Xaykham Khamsyvovong, Chairperson
552 Academy Avenue
Providence, RI 02908

by Certified Mail.
