STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Town of North Smithfield **FILE NOs.: Dam State I.D. Nos. 043, 046, 047, 048, 068, and 070**
OCI-DAMS-26-16

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" or "Town") has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

In 2006, the statute that is the subject of this Notice of Violation ("NOV") was enacted requiring an emergency action plan ("EAP") to be prepared for each significant or high hazard dam by the city or town wherein the dam lies. The deadline for the EAP's was July 1, 2008. RIDEM and the Rhode Island Emergency Management Agency ("RIEMA") developed guidelines pursuant to the statute, hosted multiple workshops, and provided outreach to assist the cities and towns in complying with the statute. In September 2022, RIDEM issued a letter by certified mail to each city or town that had not complied with the statute. The letter advised the cities and towns of the actions required to comply with the statute and the action RIDEM could take for failing to comply. Later that month, the letter to the Town was delivered as verified by certified receipt. In October 2023, RIDEM and RIEMA invited city and town officials to a workshop to inform the cities and towns about the statute and to help the cities and towns in complying with the statute. In the workshop, RIDEM informed the city and town officials that RIDEM would begin taking enforcement action in 2024 for any city or town that had not complied with the statute. No officials from the Town attended the workshop. As of the date of the NOV, the Town has no approved EAPs for dams in their jurisdiction and has failed to fully comply with the statute.

C. FACTS

(1) The following dams lie within the Town of North Smithfield, Rhode Island (collectively, the "Dams") and do not have approved EAPs:

(a) Slatersville Reservoir Upper Dam, State Identification Number ("ID") 043 ("Slatersville Upper Dam").

(b) Slatersville Reservoir Middle Dam, ID 046 ("Slatersville Middle Dam").

(c) Slatersville Reservoir Lower Dam, ID 047 ("Slatersville Lower Dam").

(d) Forestdale Pond Dam, ID 048 ("Forestdale Dam").

(e) Woonsocket Reservoir #3 Dam, ID 068 ("Woonsocket #3 Dam").

(f) Woonsocket Reservoir #1 Dam, ID 070 ("Woonsocket #1 Dam").

(2) Slatersville Upper Dam, Slatersville Middle Dam, Forestdale Dam, Woonsocket #3 Dam, and Woonsocket #1 Dam are classified by RIDEM as High Hazard.

(3) Slatersville Lower Dam is classified by RIDEM as Significant Hazard.

(4) As of the date of the NOV, the Town does not have approved EAPs for the Dams.

D. VIOLATION

Based on the foregoing facts, the Director has reasonable grounds to believe that Respondent has violated the following statutes and/or regulations:

(1) **R.I. Gen. Laws Section 46-19-9** – requiring by 1 July 2008 that an EAP be prepared for each significant or high hazard dam by the city or town wherein a dam lies.

E. ORDER

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), Respondent is hereby ORDERED to **within 180 days of receipt of the NOV**, submit to RIEMA an EAP for the Dams that is consistent with the guidance provided to the Town that was developed by RIEMA and RIDEM.

F. PENALTY

(1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

$6,313

(2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Rules") and must be paid to RIDEM within 30 days of your receipt of the NOV.

(3) Penalty payments shall be by one of two methods:

(a) By check made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767.

(b) By wire transfer in accordance with instructions provided by RIDEM.

(4) Penalties assessed against respondent in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

(5) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if RIDEM determines that reasonable efforts have been made to comply promptly with the NOV.

G. 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, orders and/or penalties set forth in Sections B through F 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 and/or whether you believe that the administrative penalty is excessive. 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:

Maria I. Rice, 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 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 Maria Rice of RIDEM's Office of Legal Services at (401) 537-4189 or maria.rice@dem.ri.gov. All other inquiries should be directed to Stacey Pinto of RIDEM's Office of Compliance and Inspection at (401) 537-4477 or 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 G above.

FOR THE DIRECTOR

By:_____
Christina Hoefsmit, 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:

Town of North Smithfield
c/o Scott Gibbs, Town Administrator
83 Greene Street
North Smithfield, RI 02896

by Certified Mail.

_____

ADMINISTRATIVE PENALTY SUMMARY

Program: Dam Safety
File Nos.: Dam State I.D. Nos. 043, 046, 047, 048, 068, and 070 and OCI-DAMS-26-16
Respondent: Town of North Smithfield

GRAVITY OF VIOLATION

SEE ATTACHED "PENALTY MATRIX WORKSHEETS."

VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) – Failure to prepare EAPs	Type II *($800 Max. Penalty) **	Major	$600	6 dams	$3,600
				SUB-TOTAL	**$3,600**

***Maximum Penalties represent the maximum penalty amounts per day, per violation.**

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:
- **THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE, OR**
- **THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.**

DESCRIPTION OF BENEFIT	*CALCULATION*		AMOUNT
Failure to prepare EAPs. The expenses associated with the preparation of the EAPs were derived from information obtained from engineering consultants on the cost to prepare the EAPs. The economic benefit of noncompliance was determined by using an EPA computer model titled *BEN* that performs a detailed economic analysis. The dates, dollar amounts, and values used in this analysis are listed in this table.	▪ Profit Status	Municipality	
	▪ Filing Status	Municipality	
	▪ One-time Non-depreciable Expense	$18,000 [1]	
	▪ First Month of Noncompliance	July 2022	
	▪ Compliance Date	01 December 2026	
	▪ Penalty Due Date	01 July 2026	
	▪ Discount Compound Rate	3.6%	
		SUB-TOTAL	**$2,713**

[1] The cost to prepare each EAP was estimated to be $3,000. The total cost to prepare 6 EAPs was estimated to be $18,000.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that RIDEM has not incurred any additional or extraordinary costs during the investigation, enforcement, and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY RULES = $6,313

PENALTY MATRIX WORKSHEET

CITATION: Failure to prepare EAPs
VIOLATION NO.: D (1)

TYPE		
___**TYPE I** DIRECTLY related to protecting health, safety, welfare, or environment.	_**X** **TYPE II** INDIRECTLY related to protecting health, safety, welfare, or environment.	___**TYPE III** INCIDENTAL to protecting health, safety, welfare, or environment.

DEVIATION FROM THE STANDARD
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

(1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to prepare and submit EAPs for the Dams to RIEMA as required by the statute. Preparation and approval of EAPs is of major importance to the regulatory program.

(2) **Environmental conditions:** The Dams are classified by RIDEM as High Hazard or Significant Hazard. A High Hazard dam is one where failure or misoperation will result in a probable loss of human life. A Significant Hazard dam is one where failure or misoperation results in no probable loss of human life but can cause major economic loss, disruption of lifeline facilities or impact other concerns detrimental to the public's health, safety, or welfare.

(3) **Amount of the pollutant:** Considered but not utilized for this calculation.

(4) **Toxicity or nature of the pollutant:** Considered but not utilized for this calculation.

(5) **Duration of the violation:** Approximately 4 years. The statute required the Town to prepare and submit the EAPs to RIEMA by 1 July 2008. RIDEM is only assessing a penalty from July 2022 (when the statue was amended to give RIDEM the authority to assess penalties) to present.

(6) **Areal extent of the violation:** Considered but not utilized for this calculation.

(7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent and/or mitigate the noncompliance. The statute required the preparation and submission of the EAPs to RIEMA by 1 July 2008. Over the ensuing years, RIDEM and RIEMA hosted multiple workshops, offered assistance, and sent correspondence to the cities and towns regarding the statute; however, the Town has failed to prepare and submit the EAPs to RIEMA.

(8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered but not utilized for this calculation.

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(9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had full control over the violation, and the violation was foreseeable. The failure to prepare and submit the EAPs to RIEMA is willful.

(10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered but not utilized for this calculation.

_X_ MAJOR	**MODERATE**	**MINOR**

Penalty Matrix where the applicable statute provides for a civil penalty up to $1,000		TYPE I	**TYPE II**	TYPE III
DEVIATION FROM STANDARD	**MAJOR**	$800 to $1,000	$600 to $800 **$600**	$400 to $600
	MODERATE	$600 to $800	$400 to $600	$200 to $400
	MINOR	$400 to $600	$200 to $400	$100 to $200