



February 22, 2008

Certified Mail No. 7007 0710 0005 4302 0291
Return Receipt Requested

Mrs. Susan Hampson
6385 Marlow Drive
Cumming, GA 30041

Subject: CERTIFICATE OF NON-COMPLIANCE and DAM SAFETY ORDER

Dam Name: Hathaway Pond Dam
Location: Rochester
National ID No: MA00368
Known Condition: Poor
Hazard Potential: Significant

Dear Mrs. Susan Hampson:

In accordance with 302 CMR 10.08, the Department of Conservation and Recreation (DCR), Office of Dam Safety (ODS) has determined that **Hathaway Pond Dam** does not meet accepted dam safety standards and is a potential threat to public safety. Therefore, you are being issued a **CERTIFICATE OF NON-COMPLIANCE and DAM SAFETY ORDER**.

Records at the Office of Dam Safety indicate Mrs. Susan Hampson to be the Owner of the Hathaway Pond Dam, National Inventory of Dams No. MA00368. The Dam is classified by the Department of Conservation and Recreation (DCR), Office of Dam Safety (ODS) as an **Intermediate Size, Significant Hazard Potential** Structure. Significant Hazard Potential Dams are dams that may cause the loss of life and property damage in the event of dam failure.

COMMONWEALTH OF MASSACHUSETTS • EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS

Department of Conservation and Recreation
251 Causeway Street, Suite 600
Boston MA 02114-2119
617-626-1250 617-626-1351 Fax
www.mass.gov/dcr



Deval L. Patrick
Governor

Timothy P. Murray
Lt. Governor

Ian A. Bowles, Secretary
Executive Office of Energy & Environmental Affairs
Richard K. Sullivan, Jr., Commissioner
Department of Conservation & Recreation

On 11/18/2006, an inspection of the Hathaway Pond Dam was completed by your engineering consultant, GAF. As a result of this inspection, the dam was determined to be **STRUCTURALLY DEFICIENT** and in **POOR** condition. The dam has been found to be in need of repair, breaching or removal to bring the dam into compliance with dam safety regulations.

The basis for the CERTIFICATE OF NON-COMPLIANCE and POOR CONDITION findings are the inspection report results for the Hathaway Pond Dam.

MGL Chapter 253, Sections 44-48 set forth the jurisdiction for the Office of Dam Safety and its authority to take action and order actions to be taken. For your information a copy of the Dam Safety Regulations, 302 CMR 10.00 Dam Safety, is enclosed.

DAM SAFETY ORDER:

In accordance with the authority of MGL Chapter 253, Section 47, POOR or Inadequate Dams, and pursuant to 302 CMR 10.07 Inspection Schedule and 10.08 Compliance with Inspection Results you are hereby **ORDERED** to comply with the following:

- 1) **Conduct Follow-up Inspections:** The owner shall complete follow-up visual inspections at 6-month intervals, conducted by a registered professional civil engineer qualified to conduct dam inspections, at your cost, until adequate repairs are made or the dam is adequately breached. The first Follow-up inspection shall be submitted to ODS no later than **May 31, 2008**.

Follow-up inspections are to be summary in format and shall provide a written description, including photographs, of any changes in condition. Your engineer is to use the attached Office of Dam Safety Poor Condition Dam Follow-up Inspection Form to report follow-up inspection findings. The form is also available electronically on the Office of Dam Safety web site. Your engineer shall include a cover letter on engineering firm letterhead that briefly summarizes the current follow-up inspection and findings. Your engineer shall sign and stamp the cover letter.

You shall submit two (2) hard copies and one (1) electronic pdf copy of all completed follow-up visual inspection reports to ODS within 30 days of the date of follow-up inspection field work.

- 2) **Conduct Phase II Inspection and Investigations.** The owner shall within 180 days of receipt of this CERTIFICATE OF NON-COMPLIANCE and DAM SAFETY ORDER hire at your cost, a qualified registered professional engineer with dam engineering experience (engineer) to conduct a Phase II Inspection and Investigation of the dam to evaluate the structural integrity and spillway hydraulic adequacy of your dam and to develop/implement a plan to bring the dam into compliance with dam safety regulations by adequately repairing, breaching or removing the dam (see attached Phase II Investigation Outline).

- a. The owner shall commence the Phase II Inspection and Investigation no later than **August 15, 2008**. The Phase II Inspection and Investigation is to conform to the attached Phase II Investigation Outline. You are to, in a letter to ODS, no later than **July 31, 2008**, identify your selected engineer and inform ODS of the start date of the Phase II work.
- b. The Phase II Inspection and Investigation is to be completed, signed and stamped by your engineer and copies of the Phase II final report are to be delivered to ODS no later than **November 31, 2008**.

You shall include a cover letter with the submitted Phase II report which describes your selected alternative to bring the dam into compliance with dam safety regulations. The owner shall submit a statement of your intent to implement inspection report recommendations to address structural and operational deficiencies to ODS upon submission of the required Phase II Inspection and Investigation completed by your engineer.

- 3) **Bring the dam into compliance and complete all repair, breach or removal work no later than November 31, 2009.** With your Phase II submittal, you must also provide a proposed timeline to design, permit and construct the selected alternative to repair, breach or remove the dam. The selected alternative must be completed, and the dam brought into compliance with Dam Safety regulations, by November 31, 2009.
- 4) **Additional Requirements:**
 - a. You shall furnish copies of all required submittals listed above via certified mail.
 - b. In order to maintain compliance with the Commonwealth's Wetlands Protection Laws you may have to seek requisite approval from your local Conservation Commission in accordance with G.L. c. 131, §40. You are obligated to contact and maintain communication with the Rochester Conservation Commission and any other local, state or federal permitting agency the ensure compliance with the Wetlands Protection Act and any other regulatory requirements.
 - c. You must inform the following parties about the condition of the dam and your developing plans to bring the dam into compliance with dam safety regulations: all abutters of the impoundment upstream; property owners within one-half mile downstream of the Hathaway Pond Dam; Jason Zimmer, District Manager, Southeast Wildlife District, Division of Fisheries & Wildlife, 195 , MA 01720; Liz Kouloheras, Department of Environmental Protection, Southeast Region, 20 Riverside Drive, MA 01887; Paul Ciaburri, Rochester Emergency Management Director; Bradford N. Morse, Chair, Board of Selectmen, Town of Rochester.

Please be advised that in accordance with G.L. c. 253, § 47, "any person ... who fails to comply with the provisions of this chapter or of any order, regulation or requirement of the department relative to dam safety, shall be fined an amount not to exceed \$500 for each offense, to be fixed by the court." Furthermore, each violation shall be regarded as a separate and distinct offense and, in case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense.


Nothing in this order releases the owner from the requirements of any prior Dam Safety Order issued for this dam, including any Dam Safety Order to submit follow-up inspections on a 6-month schedule.

In accordance with 302 CMR 10.08, this CERTIFICATE OF NON-COMPLIANCE and DAM SAFETY ORDER will be recorded at the Registry of Deeds. Issuance of a Certificate of Compliance following adequate repair or breaching of the dam will be required to discharge the CERTIFICATE OF NON-COMPLIANCE and DAM SAFETY ORDER.

Please direct any technical questions, correspondence, or submittals to Edward Hughes, Department of Conservation and Recreation, Office of Dam Safety, 251 Causeway Street, Suite 800, Boston, MA 02114. Legal questions should be directed to the DCR Assistant General Counsel, Ariana Johnson, 251 Causeway Street, Suite 600, Boston, MA 02114. Additional dam safety information can be found at the DCR-ODS website.
<http://www.mass.gov/dcr/pe/damSafety/index.htm>.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Sullivan', with a stylized flourish at the end.

Richard K. Sullivan, Jr.
Commissioner

CC: Bradford N. Morse, Chair, Board of Selectmen, Town of Rochester
Paul Ciaburri, Rochester Emergency Management Director
Rosemary Smith, Chair of Rochester Conservation Commission
Paul Sneeringer, U.S. Army Corps
Liz Kouloheras, DEP Wetland Section Chief
Deerin Babb-Brott, MEPA
Jason Zimmer, DFW
Jack Murray, DCR
Michael Misslin, DCR
William Salomaa, DCR
Edward Hughes, DCR
Ariana Johnson, Esq., DCR
Elizabeth Sorenson, DCR
Joan Kimball, Riverways

**Department of Conservation and Recreation
Office of Dam Safety
Phase II Inspection and Investigation Outline**

I.	Review of existing information.....
II.	Updated Detailed Phase I surface inspection in compliance with Office of Dam Safety Phase I Inspection format.....
III.	Subsurface Investigations – borings, sampling, analysis.....
IV.	Topographic Survey, wetlands flagging/delineation, of sufficient detail to support not only the Phase II effort, but sufficient for the future implementation of design phase.....
V.	Stability and seepage analyses – Seismic and static stability evaluation of dam (upstream and downstream slopes, internal materials), seepage potential, internal erosion potential, piping potential.....
VI.	Hydrologic/Hydraulic Analysis and spillway inadequacy resolution.....
VII.	Alternatives analysis and presentation of conceptual designs and associated estimated design, permitting and construction costs to bring the dam structure into compliance with Chapter 253 Section 44-48 and 302 CMR 10.00 Dam Safety Regulations by either executing selected repair plan or breach plan.....
VIII.	Final Report Presented to the Office of Dam Safety.....

**Commonwealth of Massachusetts
Department of Conservation and Recreation
Office of Dam Safety Poor Condition Dam Follow-up Inspection Form**

(Complete this inspection form and provide a cover letter on consulting firm letterhead that briefly summarizes the current follow-up inspection and findings. The cover letter shall be signed and stamped by the Registered Professional Engineer in charge of the inspection)

Dam Name:

Dam Owner:

Nat. ID Number:

Hazard Potential:

Location of Dam (town):

Coordinate location (lat, long):

Date of Inspection:

Weather:

Consultant Inspector(s): firm name and name of Registered Professional Engineer
in charge of inspection.

Others in Attendance at Field Inspection: include list of names, affiliation and
phone numbers.

Attachments: Updated site sketch with photo locations, Updated photos, and
copy of locus map from Phase I report and other applicable
attachments.

- I. Previous Inspection date/Overall Condition:**
 - Date of most recent formal Phase I Inspection Report:
 - List the overall condition reported in most recent Phase I Inspection Report:
- II. Previous Inspection Deficiencies:**
 - List identified deficiencies in the most recent Phase I Inspection Report:
- III. Overall Condition of Dam at the Time of the Current Follow-up Inspection:**
 - a. State the current condition**
 - b. Have conditions changed since the previous inspection? Yes or no.**
- IV. Comparison of Current Conditions to Condition Listed in Previous Phase I Inspection Report:**
 - a. Have any of the deficiencies listed in the previous Phase I Inspection Report worsened?**
 - b. If yes, list the changes.**

- c. Are there any additional deficiencies that have been identified in the current inspection?
- d. If yes, list the deficiencies and describe.

V. Dam Safety Orders:

- List dam safety orders that have been issued to the dam owner pertaining to this dam.

VI. Maintenance:

1. Indicate if there exists an operation and maintenance plan for the dam.
2. Indicate if it appears the dam is being maintained.

VII. Recommendations:

VIII. Other Comments or Observations:

IX. Updated Site Sketch with Photo Locations:

X. Updated Photos:

XI. Copy of Locus Map from Phase I Report:

XII. Other applicable attachment: