

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Greene Countrie Village Owners' Association	: Earles Lake Dam
323 Earles Lane	: DEP File No: D23-036
Newtown Square, PA 19073	: Newtown and Radnor Townships
	: Delaware County

ORDER

NOW, this 26th day of August, 2020, the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), after investigation, has found and determined that:

A. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 (“Clean Streams Law”); the Dam Safety and Encroachments Act, Act of November 26, 1978, P.L. 1375, No. 325, *as amended*, 32 P.S. §§ 693.1-693.27 (“Dam Safety Act”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”); and the regulations promulgated thereunder.

B. The Greene Countrie Village Owners’ Association (“Association”) is a Pennsylvania Condominium Association. The Association’s business address is 323 Earles Lane, Newtown Square, PA 19073.

C. The Association is an owner and operator of Earles Lake Dam, which is situated in Newtown and Radnor Townships, Delaware County, Pennsylvania. The Association is an owner of Earles Lake Dam, as the term “owner” is defined in Section 3 of

the Dam Safety Act, 32 P.S. § 693.3 and 25 Pa. Code § 105.1.

D. Earles Lake Dam forms a barrier across a natural waterway which is a tributary to Darby Creek. Earles Lake Dam is 17 feet high and 275 feet long, and has a maximum storage volume of 53 acre-feet (at top of dam). The area that drains to Earles Lake Dam is approximately 0.52 square miles or 333 acres.

E. The Dam Safety Act, 32 P.S. § 693.4(1), regulates “all dams on a natural or artificial watercourse, other than those licensed pursuant to the Federal Power Act, where (i) the contributory drainage area exceeds 100 acres; or (ii) the greatest depth of water at maximum storage elevation exceeds 15 feet; or (iii) the impounding capacity at maximum storage elevation exceeds 50-acre feet.”

F. Earles Lake Dam exceeds the minimum criteria listed in paragraph E, above, and is therefore regulated by the Dam Safety Act and the 25 Pa. Code Chapter 105 regulations promulgated thereunder.

G. Earles Lake Dam is a “high hazard dam,” defined in Section 3 of the Dam Safety Act, 32 P.S. § 693.3, and 25 Pa. Code § 105.1, as “a dam so located as to endanger populated areas downstream by its failure.”

H. As defined in 25 Pa. Code § 105.91, Earles Lake Dam’s size category is “C” because the height of the dam is less than 40 feet and the maximum impoundment storage is less than 1,000 acre-feet. As defined in 25 Pa. Code § 105.91, Earles Lake Dam’s hazard potential category is “1” because its failure could impact at least 20 people and one (1) business, and therefore, it is considered a “high hazard” dam as defined in 25 Pa. Code § 105.1.

I. 25 Pa. Code § 105.11 states, in pertinent part, that a person may not construct,

operate, maintain, modify, enlarge, or abandon a dam, water obstruction or encroachment without first obtaining a written permit from the Department.

J. The Department has never issued a permit to the Association for Earles Lake Dam.

K. The Department has determined that the failure of the Association, as an owner of the Earles Lake Dam, to operate and maintain the Earles Lake Dam without obtaining a permit from the Department is a violation of 25 Pa. Code § 105.11.

L. On February 19 and June 17, 2020, the Department conducted inspections of the Earles Lake Dam. During the inspections, the Department observed that the condition of the dam continues to deteriorate and that it is not in a safe condition. Specifically, the Department noted that the spillway cap was damaged and dislodged from the abutments, the emergency spillway abutments were cracked, the EAP (as defined below) had not been updated, and the saturated toe areas should be investigated and repaired.

M. 25 Pa. Code § 105.51 states, in pertinent part, the permittee or owner of a dam, water obstruction or encroachment shall operate and maintain the facility and appurtenant structures in a safe condition.

N. The Department has determined that the Association's failure, as an owner of the Earles Lake Dam, to maintain Earles Lake Dam in a safe condition is a violation of 25 Pa. Code § 105.51.

O. 25 Pa. Code § 105.134 requires, in pertinent part, the permittee or owner of an existing Hazard Potential Category 1 dam to develop an Emergency Action Plan ("EAP") to be followed in the event of a dam hazard emergency and specifies that the EAP shall be reviewed and updated every 5 years.

P. The Department has determined that the Association's failure, as an owner of the Earles Lake Dam, to update the EAP for Earles Lake Dam since 2009 is a violation of 25 Pa. Code § 105.134.

Q. 25 Pa. Code § 105.13b states, in pertinent part, that for hazard potential category 1 dams, the Department will require proof of financial responsibility or security assuring the proper construction, repair, operation and maintenance, inspection and monitoring and removal, if necessary, of the facility.

R. On August 25, 2011, the Department notified the Association that the proof of financial responsibility amount for Earles Lake Dam was thirty-thousand dollars (\$30,000). The Association did not and has not since then provided proof of financial responsibility. The Department has determined that the failure of the Association, as an owner of the Earles Lake Dam, to provide proof of financial responsibility is a violation of 25 Pa. Code § 105.13b.

S. 25 Pa. Code § 105.94 states, in pertinent part, that spillways must be capable of safely conveying the design flood and that the spillway floor slab must be provided with adequate drainage, anchors, or both drainage and anchors to be stable against uplift.

T. The Department has determined that the Earles Lake Dam spillway is capable of passing only 79% of a 100-year storm event, the design flood, and fails to meet the requirements of 25 Pa. Code § 105.94.

U. 25 Pa. Code § 105.97(a) states that "[d]ams must be structurally sound and be constructed of sound and durable materials."

V. In 2011, due to Hurricane Irene, the Earles Lake Dam sustained significant damage and has known sinkholes. The damage to Earles Lake Dam has not been repaired. The Department has determined that the failure to maintain the Earles Lake Dam in a

structurally sound manner is a violation of 25 Pa. Code § 105.97(a).

W. 25 Pa. Code § 105.96(a) states, in pertinent part, that dams must include a device to allow for the complete draining of the reservoir.

X. The Department has determined that the failure of the Earles Lake Dam to include adequate outlet works is a violation of 25 Pa. Code § 105.96(a).

Y. The Department has determined that the violations described in Paragraphs K, N, P, R, T, V, and X constitute unlawful conduct under Section 18 of the Dam Safety Act, 32 P.S. § 693.18, a statutory nuisance under Section 19 of the Dam Safety Act, 32 P.S. § 693.19, and subjects the Association to civil penalty liability under Section 21 of the Dam Safety Act, 32 P.S. § 693.21 as an owner of Earles Lake Dam.

Z. On August 8, 2020, the Association submitted revised engineering plans to partially breach the Earles Lake Dam (“partial breach project”) to the Department.

AA. On August 10, 2020, the Department notified the Association’s engineer, Eric Ditchey, P.E., that the partial breach plan identified in Paragraph Z, above, could be finalized.

NOW, THEREFORE, pursuant to Sections 14, 19 and 20 of the Dam Safety and Encroachments Act, 32 P.S. §§ 693.14, 693.19 and 693.20; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17, the Department hereby ORDERS the Association to perform the following activities:

1. The Association shall immediately start to implement its revised engineering plans, submitted on August 8, 2020, for the partial breach of the Earles Lake Dam, as outlined below.
2. No later than September 15, 2020, the Association shall have a contractor under

contract to begin the partial breach project on the Earles Lake Dam. The contract shall be provided to the Department upon request.

3. The Association shall immediately begin to implement measures identified in the PA Fish and Boat Commission (“PFBC”) Species Impact Review (“SIR”) #49127, and referenced in a PFBC letter regarding Earles Lake Dam to the Association’s engineer, Eric J. Ditchey, dated April 19, 2018. SIR #49127 includes the need for a PFBC-approved Eastern Redbelly Turtle salvage plan in order to avoid impacts to the species during the partial breaching of the Earles Lake Dam.
4. By September 21, 2020, the Association shall commence site preparation and construction activities for the partial breach of the Earles Lake Dam.
5. The following changes and considerations must be followed throughout the partial breach project.
 - a. The work to conduct the partial breach shall be conducted under the supervision of a professional engineer (P.E.) licensed and registered in the Commonwealth of Pennsylvania. The onsite supervising P.E. shall confer with the Department to clearly define the scope of the project and the plan aspects to be incorporated in the partial breach.
 - b. The partial breach shall be excavated to an elevation of 250’ or sediment level, whichever is lower. The final excavation elevation shall be determined by the onsite supervising P.E. in coordination with the Department.
 - c. Upon starting excavation on the partial breach project, all reasonable means shall be taken to complete and stabilize the partial breach section in the shortest time as possible in an effort to limit the time of exposure.

- d. Any material stockpiles and spoils not otherwise disposed of in accordance with the partial breach project plan shall be placed outside of the floodplain or wetland areas, and proper erosion and sedimentation (“E&S”) controls shall be implemented.
 - e. The Association shall minimize the pumping of sediment laden water to the greatest extent practicable while accomplishing the intended goal of mitigating the dam hazard emergency.
 - f. The Association shall coordinate the protection of the sanitary sewer facilities with the responsible owner of the municipal system to the extent any such sanitary sewer facilities shall be impacted by the excavation work to be completed in conjunction with the partial breach project.
 - g. The Association shall provide weekly updates, including photographs, regarding the status of efforts towards drawdown and partial breaching by email to ricreising@pa.gov and ranadams@pa.gov.
6. At least seven (7) days prior to beginning construction, the Association shall contact the Department to schedule a pre-construction meeting. At a minimum, participants shall include the Department, the Association’s engineer responsible for oversight and supervision of the partial breach project, and the contractor and subcontractors conducting the work.
7. No later than October 30, 2020, the Association shall complete construction for the partial breach to the satisfaction of the Department.

8. Within two (2) days of completing work on the partial breach project, except the stabilization work to be conducted under Paragraph 9, below, the Association shall schedule a final inspection with the Department.
9. Within thirty (30) days of completing the partial breach work, final stabilization shall be completed of all disturbed areas in accordance with 25 Pa. Code § 102.22.
10. Within thirty (30) days of completing final stabilization under Paragraph 9, the Association shall submit as-built drawings, photographs, and supporting documentation of the site conditions to the Department.

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION

A handwritten signature in black ink, appearing to read "Richard A. Reisinger". The signature is fluid and cursive, with a large, stylized initial "R".

Richard A. Reisinger, P.E.
Chief, Division of Dam Safety
Bureau of Waterways Engineering and
Wetlands