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**Department of Defense, Veterans and Emergency Management
State House Station 33
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May 8, 2007

Office of the Co=issiorier

Raymond J. Fortier
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**EMERGENCY SUPPLEMENTAL DAM SAFETY ORDER
Anasagunticook Lake Dam, Canton, Maine**

This order supplements the Dam Safety Order for the Anasagunticook Lake Dam in Canton, Maine, issued on December 4, 2006, in accordance with the provisions of 37-B 1VI.R.S.A. sections 1111-1130 (hereafter "the December 4 Order"). The findings and conclusions of the December 4 Order are incorporated herein by reference (see attached copy). Additional findings are set forth below.

The requirements of the December 4 Order, which remain in effect, directed the dam owner to do the following:

1. Engage a licensed professional engineer, specializing in dam construction, to assist in preparing a remedial action plan.
2. Develop a remedial action plan with the assistance of the licensed professional engineer to restore the integrity and structural stability of the dam and to assure that it functions and operates in a manner that will protect public safety, including at a minimum'
 - a. An evaluation of the causes and extent of settlement, seepage and erosion of the left and right earthen embankments and a plan for restoring the integrity and structural stability of the embankments;
 - b. A plan for removing all new fill material along the left embankment or, if the engineer determines that the fill does not compromise the integrity and structural stability of the embankment, a plan for stabilizing and incozporating the fill as part of the embankment;

- c. A plan for repairing and testing the four spillway gates to ensure that all gates are functional *and* can be raised in, a timely manner to the fully open position;
 - d. An emergency operational procedure that will be employed to open the spillway gates during flooding situations;
 - e. A plan for reducing the height of all four spillway gates to increase the flow capacity of the spillway; and
 - f. A schedule for completing all elements of the remedial action plan by December 31, 2007.
3. Submit the remedial action plan, signed by the engineer, to me for approval no later than March 31, 2007.
 4. Complete the work outlined in the remedial action plan in accordance with the terms of my approval, which shall be specified in a supplemental order,
 5. Complete all work in compliance with local and state permitting rules. By copy of this order, the Town of Canton and the Department of Environmental Protection are respectfully requested to process any complete permit applications that may be submitted by the owner as expeditiously as possible,

FINDINGS

As of this date, the dam owner, Raymond J. Fortier, has neither complied with, nor submitted a schedule for complying with, any of the terms of the December 4 Order.

Thus, the dam owner ^{currently} has no remedial action plan to restore the integrity and structural stability of the earthen dam; no plan for repairing and testing the four spillway gates to ensure that all are functional and can be raised in a timely manner to the fully open position; no emergency operational procedure for opening the spillway gates during flooding conditions; and no plan for reducing the height of all four spillway gates to increase the flow capacity of the spillway.

The operation of the Ariasagunticook Lake Dam is subject to the terms and condition of a water level order issued on September 13, 1978 by the State Soil and Water Conservation Commission, which is enforceable by the Department of Environmental Protection ("DEP"), Pursuant to Title 38 M.R.S.A. section 842. Operation of the dam is also governed by the Anasagunticook Lake Water Level Management Plan, issued by DEP and dated August 30, 1996, which describes the steps required to achieve the water *level* established in the 1978 order. The Plan requires the owner to close two of the spillway gates on or about April 15 of each year, and to close the remaining two spillway gates on or about May 1 to achieve an interim target water level at Mark 19 on the staff gauge at the dam. On or about May 15, the Plan requires that all four spillway

gates be closed in order to allow the lake to re-fill to the summer target level at Mark 23 2/3 on the staff gauge at the dam, which is the maximum level established by the 1978 Water Level Order. This target level is to be maintained between June 1 and November 1. The summer target level is approximately six (6) feet higher than the elevation of the sill onto which the spillway gates close. If the spillway gates are fully open, then with normal summer flows, the water level at the dam will be approximately six (6) feet below the summer target level.

37-B 1v,i.R.S.A. section 1111(4) defines "emergency situation" as a situation determined by the Commissioner of DVEM, after consultation with other state and federal agencies if time permits, to present a potential but real and impending danger to life, limb or property because of flooding and imminent flooding and includes a situation that the Governor declares to be an emergency pursuant to 37-B IVLkZ,S.A. section 742.

37-B M.R.S.A, section 1114(2) provides that, when an emergency situation arises, the Commissioner of DVEM shall warn the public of the emergency and, notwithstanding any other provision of law, shall take all actions necessary to protect life and property which may include, but are not limited to, the following: A) taking full charge and control of any dam or reservoir; B) lowering the water level by releasing water from the reservoir; C) completely emptying the reservoir; D) breaching or removing the dam itself, and E) taking any other necessary steps to safeguard life and property.

In evaluating the current situation at the dam and considering what actions may be necessary to protect public safety, I have consulted with other appropriate state and *federal* agencies, including the Maine Department of Environmental Protection.

CONCLUSIONS

As I concluded in the December 4 Order:

- The current spillway does not have adequate capacity to handle outflow during flood conditions without overtopping the earthen embankments on both sides, potentially causing the dam to breach and flood areas below;
- In addition, the placement of fill material along the top of the left earthen embankment, which was not called for by any prior dam safety orders or the recommendations of the State Dam Inspector, has placed an additional load on a structure which was already unstable as evidenced by settlement; and
- Based on the reports of the State Dam Inspector and the information presented at the review conference, I find that the integrity, structural stability, function and operation of the dam constitute a threat to public safety.

Conditions at the *dam have not* improved since December 4, 2006.

Until and unless the remedial actions required in the December 4 Order are undertaken to restore the structural integrity of the dam and provide for safe and effective operation of the spillway gates, the closing of the spillway gates and refilling of Anasagunticook Lake in accordance with the terms of the outstanding water level order may further compromise the structural integrity of the dam, significantly increasing the risk that the dam *will* breach and flood areas below with little or no advance warning.

Based on *the* available information, I find that the situation at the dam presents a potential but *real* and impending danger to life, limb or property because of flooding or potential and imminent flooding pursuant to 37-B M.R.S.A. section 1114(2).

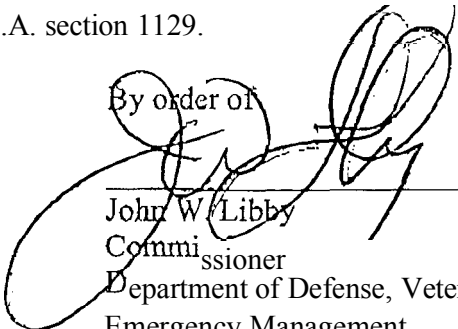
Maintaining a lower water level and *keeping* the spillway gates open, until such time as the remedial actions required in the December 4 Order are undertaken, constitutes the most prudent and appropriate means to mitigate this emergency situation and to protect life and property pursuant to 37-B M.R.S.A., section 1114(2).

ORDER

Based on the above findings and conclusions, I hereby order that, until the remedial actions required in the December 4, 2006 Dam Safety Order are undertaken, the owner, lessee or other person in control of the Anasagunticook Dam shall leave the overflow sluice gates at the dam open and clear of the water.

Failure to comply with this order may subject the owner, lessee or other person in control of the dam to a civil penalty of not less than \$100 nor more than \$5,000 for each day that the violations

continues, pursuant to Title 37-B M.R.S.A. section 1129.

By order of


John W. Libby
Commissioner
Department of Defense, Veterans and
Emergency Management

NOTICE OF APPEAL RIGHTS: Any person aggrieved by this Order has a right to seek judicial review by filing a Petition for Review within 30 days of receipt of *this* Order in Superior Court, in accordance with Title 5 M.R.S.A. §§11001 & 11002 and *Rule* 80C of the Maine *Rules of Civil Procedure*.

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