

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)
)
)
)
)
IN RE: ATKINSON POND DAM)
DAM # D-3545)
)
)
)

BEFORE THE
DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL

EMERGENCY ORDER

The South Carolina Department of Health and Environmental Control (the Department), pursuant to the South Carolina Dams and Reservoirs Act, S.C. Code Ann. 49-11-110, et seq., and Regulation 72-1, et. seq., hereby issues this Emergency Order to PATRICIA FERGUSON AND THOMAS FERGUSON, for required action related to Dam # D-3545 (ATKINSON POND DAM) located at Latitude: 34.30052661, Longitude: -79.80836651 in Darlington County, South Carolina.

FINDINGS OF FACT

1. ATKINSON POND DAM’s embankment impounds a tributary of Black Creek.
2. ATKINSON POND DAM has the potential to impact Pocket Road.
3. PATRICIA FERGUSON AND THOMAS FERGUSON is an/the Owner of ATKINSON POND DAM pursuant to SECTION 49-11-120.(9), which defines an “Owner” as those who own, control, operate, maintain, manage, or propose to construct a dam or reservoir.
4. The Department has determined through field inspections that the referenced dam appears unsafe and a potential danger to property. It has been determined that it is necessary that immediate action be undertaken by the dam owner to prevent failure of the dam and the serious damage to property that would result from its failure.

CONCLUSIONS OF LAW

1. ~~The SC Dams and Reservoirs Safety Act, S.C. Code Ann. 49-11-110, et seq., (2008) and Regulation 72-1, et seq. (2012), authorize South Carolina's dams and reservoirs safety program. The purpose of the Act and Regulation is to protect citizens' health, safety, and welfare by reducing the risk of failure of regulated dams.~~
2. Under the Act and Regulation an owner at its own expense has responsibility for maintaining a dam, reservoir and appurtenant works in a properly functioning and safe condition throughout the life of the structures.
3. The Dams and Reservoirs Safety Act Regulations, 72-5, states, "The Department has the authority and responsibility to issue orders to dam owners mandating remedial measures necessary to protect life and property from danger imposed by unsafe dams. The remedial measures ordered by the Department shall be made at the dam owner's expense and shall normally include a detailed inspection followed by appropriate repairs."
4. SECTION 49-11-190 of the Act, provides as follows:
 - A. The Department immediately shall order remedial measures necessary to protect life or property if the condition of a dam or reservoir is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of a repair order or passing of imminent floods threaten overtopping erosion or destruction of a dam or reservoir capable of danger to life or property.
 - B. In applying emergency measures the Department has the following authority to order the owner to:
 1. lower the water level by releasing water from the reservoir;
 2. empty the reservoir completely;
 3. take other steps essential to safeguard life and property.

THEREFORE, IT IS ORDERED, that PATRICIA FERGUSON AND THOMAS FERGUSON, undertake the following actions:


1. Under the supervision of a qualified registered professional engineer licensed to practice in South Carolina, immediately lower the water level or empty the reservoir, and take any other steps essential to safeguard life and property. If necessary, take appropriate action to notify downstream property owner(s) as needed. No later than 5:00 P.M. on October 18, 2016, submit to the Department documentation of compliance with this requirement.
2. Have a detailed inspection conducted, as defined in the Dams and Reservoirs Safety Act and the Dams and Reservoirs Safety Act Regulations, of the dam, reservoir, and all appurtenant works by a qualified registered professional engineer licensed to practice in South Carolina. The results of the detailed inspection, including a plan of action to be taken, shall be submitted by the engineer to the Department no later than 5:00 P.M. on October 26, 2016.

PURSUANT TO THIS ORDER, communications regarding this Order and its requirements shall be addressed or directed to:

Attn: John McCain
SCDHEC
Bureau of Water- Dam Safety Program
2600 Bull Street
Columbia, South Carolina 29201
Phone: (803)-898-8178
Fax: (803)-898-4095
Email: mccainjm@dhec.sc.gov

IT IS FURTHER ORDERED, that pursuant to S.C. Code Ann. Section 49-11-200, no repair or reconstruction to the dam other than emergency measures to safeguard life or property may be undertaken prior to the owner obtaining written approval of plans and specification from the Department.

AND IT IS SO ORDERED.



Deputy Director

10/13/2016

Date

South Carolina Department of Health and
Environmental Control
Columbia, South Carolina