

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

BEFORE THE)
DEPARTMENT OF HEALTH AND)
ENVIRONMENTAL CONTROL)

IN RE: COOK POND DAM)
DAM # D-1068)

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 Alval C. Kirby, for required action related to Dam # D-1068 (Cook Pond Dam) located at Longitude: -80.77560768, Latitude: 34.15243939, Kershaw County, South Carolina.

FINDINGS OF FACT

1. Cook Pond Dam’s embankment impounds Kelly Creek.
2. The hazard potential for this dam is classified as significant, meaning that it is likely that damage to a home, industrial facility, commercial facility, secondary highway, railroad, or interruption of use or service of relatively important public utilities would result from its failure.
3. Alval C. Kirby is the Owner of Cook 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 maintenance 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 Alval C. Kirby 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 20, 2015, 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 30, 2015.

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

Attn: David Graves
SCDHEC
Bureau of Water-Surface Water Monitoring and Dam Safety Section
2600 Bull Street
Columbia, South Carolina 29201
Phone: (803)-429-5341
Fax: (803)-898-3795
Email: GRAVESDA@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.

EADweek

Deputy Director

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

10/15/15

Date