

Whitney Brook Dam Update

January 15, 2008

Although there has been little physical activity around the dam, there has been progress or at least some movement. As you may remember, MEMA placed two further deadlines on Ray Fortier with regard to the May 8th Dam Safety Order repairs; October 15th for submission of acceptable engineering plans for the remedial repairs and December 31st for completion of those ordered repairs. MEMA received and accepted Ray Fortier's engineering report by Wright Pierce Engineers sometime in November but after their deadline.

Mr. Fortier has reportedly said this fall that he intended to do the work himself and to meet the deadlines. MEMA requires supervision by a professional engineer, however, and Wright Pierce is not interested in supervising the dam owner's work. Mr. Fortier has more recently mentioned two different contractors to help him complete the work. On November 19th, Mr. Fortier filed an application for a Natural Resource Protection Act (NRPA) permit with DEP to make the ordered repairs and the application was accepted by DEP for processing on November 28th. There is a twenty-day public notice required by NRPA to give interested parties a chance to review and comment on the application and/or to hold a public hearing. Canton chose not to hold the hearing; however, Mac Ray, Chair of the Core Group and engineer, raised several questions on December 12th with Kristen Chamberlain, DEP Project Analyst, concerning the orientation of the new emergency spillway and outflow channel and the potential for damage to his downstream property. DEP gave Mr. Fortier until January 11th to submit additional information and revised design plans as requested. The Core Group has not heard from DEP since their new deadline was set.

The December 31st deadline has passed and because of the holidays and the absence of the Core Group Chair, it has taken us some time to find out what is now happening. We recently heard from Rob Mc Aleer, MEMA Director who reports that MEMA sent a letter to Mr. Fortier dated January 9, 2008 notifying him that he was not in compliance with the requirement to submit a remedial action plan by October 25, or to complete the corrective actions by December 31. The letter reiterated the financial penalties associated with failure to comply and noted that those penalties have been accruing since the respective deadlines. This letter also noted that MEMA has referred this matter to the Attorney General's Office to initiate appropriate action to enforce the Dam Safety Orders, including the collection of penalties. We have also heard from Rep. Terry Hayes that Phyllis Gardiner, Assistant Attorney General on this case, is drafting the complaint against the dam owner and expects to file the complaint in Oxford County Superior Court within three to four weeks.

The Core Group continues to meet regularly and now has new questions about this process and will make plans for encouraging local action accordingly.

Submitted by,
Judy Hamilton, Secretary
Core Group for a Permanent Solution