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March 2, 2010

MICHELLE SCHNEIDER P.E.
ENVIRONMENTAL ENFORCEMENT
WISCONSIN DEPARTMENT OF NATURAL RESOURCES
141 NW BARSTOW, ROOM 180
WAUKESHA, WI 53188

**Re: Eagle Spring Lake Management District
Wambold Dam Plan Approval**

Dear Ms. Schneider:

I am in receipt of your February 17, 2010 letter to the Eagle Spring Management District wherein you approved the plans and completed repair work on the Wambold Dam. While I am sure that the District is gratified that you have concluded that the plans and work are satisfactory, several of the comments made in your letter necessitate a response.

Although you state that the "Department was surprised" that the District did not contact the WisDNR prior to initiating work on the Wambold Dam, the District has gone to great efforts to explain that the work was, in all circumstances, viewed by the District as "maintenance". As previously explained, deterioration to the concrete within the spillway was found to have deteriorated during routine pressure washing. The District accepted the recommendation by its contractor to resolve the deterioration as part of the maintenance work that had already been commenced to avoid any possibility of further deterioration and based upon the mandate that the District believed it was under to take care of issues pertaining to the dam as they arose before they became a problem.

It would appear that your "surprise" in this regard stems from the fact that you have derived both a definition of "maintenance" and requirements for plan submission and approval that substantially differ from any standards heretofore communicated to the District by the WisDNR. The authority that you relied on in establishing your definition of "maintenance" is also unclear in that it does not appear to have any basis in Chapter 31 stats., NR 333, or NR 335. Once again, the District has been operating on the basis of prior communications from the WisDNR that refer to the need for plan approval "[i]f you plan any significant alterations to the dam" as well as communications that it should take care of issues that arise concerning the dam *before* they become a problem. Obviously, if expectations have since changed, it is important that the WisDNR provide clear, consistent communications to dam operators concerning such expectations to avoid surprise from anyone involved.

I continue to question your assertion that the maintenance work to the spillway apron constituted "a substantial alteration or addition" to the "dam" under Wis. Stat. § 31.18. Clearly, the work did not constitute an "addition" to the dam but it is also quite clear that the work done cannot be said to be "substantial" nor that it be logically argued to constitute an "alteration" to the "dam". Unquestionably, the concrete repair work was done to the spillway apron. Although Wis. Stat. § 31.02(4)(d) permits the WisDNR to

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require a dam to be equipped and operated with “spillways” it is not clear that Wis. Stat. 31.18 provisions concerning substantial alterations or additions to a “dam” are also applicable to routine maintenance of a “spillway”, which in no way affects the hydraulic capacity of the dam.

Finally, your February 17th letter makes inferences with regard to the quality of the repair work that was performed on the dam. Your comments in this regard are surprising in light of the fact that the District’s consulting engineers raised no issue with regard to the long-term viability of the repairs and in light of the fact that your letter confirms your approval of the plans pertaining to such work. As a result, I infer your comments in this regard are merely being intended to support the value of collaborative efforts between the District and the WisDNR rather than any actual concern with regard to the work that was performed.

I continue to await confirmation that the WisDNR has now satisfied itself that no violations have occurred so that I may close my file on this matter.

Very truly yours,

ARENZ, MOLTER, MACY & RIFFLE, S.C.

Stan Riffle

H. Stanley Riffle

PA/

cc: Thomas Day, Chair, Eagle Spring Lake Management District
Eagle Spring Lake Management District Board
John Mann
Debra Roszak, WisDNR
William Sturtevant, WisDNR
Jim McNelley, WisDNR