

**INTEROFFICE MEMORANDUM
CITY OF LOWELL – LAW DEPARTMENT
EXT. 4050
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TO: Bernard F. Lynch, City Manager
Christine P. O'Connor, City Solicitor
Lisa DeMeo, City Engineer

FROM: R. Eric Slagle, Asst. City Solicitor

DATE: 08/21/2009

SUBJECT: ENEL – Debris Removal Enforcement Options

You have requested an opinion from the Law Department regarding the City's enforcement options regarding ENEL's debris removal from both the Pawtucket Dam and the gatehouses thereto. Having reviewed the applicable statutes and regulations, it appears that the City has no enforcement authority regarding the accumulation of debris from the dam or the gatehouses, or authority to mandate the time of its removal. Rather, the jurisdiction over the dam and its appurtenances rests with the Army Corps of Engineers, who exercise jurisdiction over navigable waters.

However, once ENEL takes on the task of removing the debris from the dam and the gatehouses, the City has limited jurisdiction over the manner of that removal. ENEL has two options with which to effect removal of the debris. The first option is to remove the debris from the bank of the river. In the case of this option, the Conservation Commission exercises jurisdiction over work which would "remove, fill, dredge, alter, or build" upon land within the 100 feet of the bank of the river. It does not appear that the debris removal contemplated by ENEL falls within any of these categories. Therefore, ENEL would not be required by statute or ordinance to obtain a permit from the

Commission to perform the debris work. It may be possible for us to request that ENEL file a one-time Determination of Applicability for the debris removal procedures so that the Conservation Commission can comment on them, but, likely, the ultimate determination would be that the Wetlands Protection Act does not apply.

The second option is to remove the debris from the bridge, over the gate house. In this case, the Department of Public Works would issue a street closing permit, but has no jurisdiction over the work done in the river under that permit.

City of Lowell - Law Department

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August 21, 2009

Jon Dollard
Enel North America, Inc.
One Tech Drive, Suite 220
Andover, MA 01810

RE: Boott Hydropower, Inc. – Pawtucket Dam

Mr. Dollard,

I would like to thank you for working with the City of Lowell developing a maintenance plan for the proper removal and disposal of debris and trash from the Merrimack River at the Pawtucket Dam and its gatehouse structures. On Friday, April 17, 2009 representatives from ENEL, NPS, and DCR met with the City Engineer and City Environmental Officer at the Blacksmith shop next to the Pawtucket Dam to discuss options for debris removal.

The first option, which was the preferred option of the group, was to remove the debris from the bank of the river. The second option was to remove the debris from the bridge, over the gate house. At that time the group promulgated a set of procedures for the debris removal, which ENEL agreed to prepare in written form and disseminate to the group. My understanding is that this document will be forthcoming. The following week, debris was removed successfully following the steps in option one, removal from the bank of the river.

It is my understanding that ENEL is contemplating another debris removal operation in the coming weeks. The City would appreciate and anticipate your keeping both the Conservation Commission and the Engineer's Office informed of this and any future rounds of debris cleanup in keeping with the procedures established at the April 17, 2009 meeting.

August 21, 2009
Jon Dollard
Enel North America, Inc.
Andover, MA 01810
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If you have any questions or concerns regarding this or any other issue, please do not hesitate to contact me.

Very truly yours,



R. Eric Slagle
Asst. City Solicitor

cc: Members of the City Council
Bernard F. Lynch, City Manager
Christine P. O'Connor, City Solicitor
Lisa E. DeMeo, City Engineer