

PUBLIC HEARING re: DAM SAFETY REGULATIONS
New York State Department of Environmental Conservation
May 2, 2008

Testimony of

DAM CONCERNED CITIZENS, INC.
P.O. Box 310
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May 2, 2008

Jamie Woodall
Comments on Dam Safety Rule Making
Bureau of Flood Protection and Dam Safety
Division of Water
NYS Department of Environmental Conservation
625 Broadway, 4th Floor
Albany, NY 12233-3504

Dear Ms. Woodall:

Dam Concerned Citizens, Inc. is an organization made up of concerned residents who live below the Class C, High Hazard, Gilboa Dam on the Schoharie Reservoir, Gilboa, NY. Our membership includes citizens from Schoharie, Montgomery and Schenectady Counties all of whom reside below this dam that was deemed at an unacceptable Factor of Safety October 25, 2005 and in threat of failure should it not be repaired immediately. Our organization began in November, 2005 and became incorporated in March, 2006 with a 501c-3 status retroactive that date and a Board of Directors with representation from all three counties.

Our purpose is to see that this Class C dam be redesigned, rehabilitated and reconstructed to the highest possible Factor of Safety. Our organization serves to inform the public regarding what progress is being made toward the completion of this project. Also, we support the Schoharie County Board of Supervisor's in their efforts and testimony given here, today.

We wish to address the proposed amendments to Part 673 Dam Safety Regulations recommending language clarification and modification, the addition to or deletion of specific portions of these proposed regulations all of which have been approved by the Board of Directors of Dam Concerned Citizens, Inc. Our written testimony sites in black the numbers and letters of part 673 proposed regulation(s) and in blue the recommendations being submitted by DCC, Inc. We ask that you give careful consideration to our proposals and concerns.

Thank you for providing this opportunity for us to testify at this hearing and we look forward to a response from the Department of Environmental Conservation.

Sincerely,
Sherrie Bartholomew
Vice President

Contributors to DCC, Inc. Recommendations

Gail Shaffer - Director DCC, Inc., Secretary of State-1983-1994

Michael Quinn - Director DCC, Inc.,

Howard Roger Bartholomew - Director DCC, Inc.

Alexander J. Bartholomew - Ph.D., Geologist

John Garver - Ph.D., Geologist/Environmentalist

Anthony VanGlad - Supervisor Town of Gilboa

Evan Bennet - Director DCC, Inc., Corresponding Secretary

Sherrie Bartholomew - DCC, Inc., Vice President

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673.3 General provisions.

(c) No action shall be brought against the department or its agents for the recovery of damages caused by the partial or total failure of any dam or through the operation of any dam upon the ground that the department is liable by virtue of any of the following:

DCC-Recommendation:

(c) Omit section "c" completely

673.5 Hazard classification.

(a) The department may assign a hazard classification to dams according to the potential impacts of a dam failure. The factors used to assess a hazard classification are:

- (1) the height of the dam and the maximum impoundment capacity;*
- (2) the potential for loss of human life;*
- (3) the physical characteristics of the dam site and the location of developed areas, occupied buildings or other land improvement in the area which would be affected by a failure of the dam;*
- (4) the economic loss which could result from failure of the dam;*
- (5) the environmental damage which could result from a failure of the dam;*

DCC-recommendations: change numbering to 1-8

- (6) potential loss of agricultural resources, particularly where prime farm lands are impacted;*
 - (7) potential loss of historic, cultural, and/or scenic resources;*
- and*
- (8) other site-specific characteristics which the department determines are necessary to consider.*

673.6 Hazard Classification.

(4) Class D dams are either breached or failed dams, or dams which were planned but never constructed. Class D dams pose

negligible or no hazard. The department may retain any pertinent records.

DCC-recommendations:

Transition from Class C to Class D:

(4)a. **clarify** the difference between breached and failed dam in Class D dams.

b. **suggestion**...when stream returns to “natural conditions” Dam owner and/or Local Government can request a reassessment of dam classification level.

673.6 Dam Owner Responsibilities

(d) Financial Security.

(1) *All Class C dam owners shall provide financial security acceptable to the department, to assure that funds will be available to allow any necessary actions to be taken to protect life, property or natural resources during the lifetime of the dam. If the dam provides a public benefit such as: public drinking water supply; flood protection; hydroelectric power generation; navigational necessity; or recreational necessity, then necessary actions will likely mean repairs or reconstruction of the dam. Otherwise, necessary actions could mean breaching or removal of the dam. The amount of financial security may include the following costs:*

- (i) all labor and materials;*
- (ii) preliminary investigations and surveys;*
- (iii) construction plans;*
- (iv) environmental mitigation associated with any of the actions taken; and*
- (v) any other appropriate cost as determined by the department.*

DCC-recommendation:

d) Financial Security-change numbers to 1-7

(2) Failure of a Class C dam to achieve a 1.25 full pool FOS shall compel the owner of the dam to pay flood insurance premiums for all those lives and properties down stream of dams that are outside of perimeter of 100 year flood zone but contained within perimeters of zones of inundation

occurring at either failure of dam at full pool level or occurring during an extreme flood event as defined by inundation maps prepared by an independent agency.

(3) Using independent agency inundation maps, estimate potential damages/loss of life and property and assign value to that to be assumed by deficient dam owners.

(4) The financial security that is bonded or otherwise guaranteed must include the potential damages to life, property and natural resources in event of dam failure.

673.7 Inspection Process.

(a) Role of the Dam Owner.

(2) *All Class B and Class C dam owners shall retain, at the dam owner's sole expense, an engineer to perform periodic dam safety inspections and engineering assessments.*

DCC recommendations:

(2) All dam owners shall contribute to a state-administered fund to provide for independent engineers to perform periodic dam safety inspections and engineering assessments. The amount paid by each dam owner shall be related to the conditions of the dam, the dam classification and the rating assigned under the dam rating system.

(i) *Dam safety inspections are required at the following minimum frequency: Class C dams, every 2 years; Class B dams, every 4 years; in event of known rating of 5 or less under the dam rating system, or in the event of known noncompliance, an inspection shall be required every year.*

(ii) *Engineering assessments are required at a minimum frequency of 10 years. When a dam is determined to be at level 5 or less, an engineering assessment shall be required immediately. Within three years of the effective date of these regulations, the owners of Class C dams shall submit the first engineering assessment to the department. Within five years of the effective date of these regulations, the owners of Class B dams shall submit the first engineering assessment to the department.*

(a) Role of Dam Owner

(3) The engineer conducting a dam safety inspection shall prepare a written report which includes but is not limited to:

(v) A schedule for any corrective actions required to address identified deficiencies and to assure the safety of the dam. The department may comment on or approve the schedule.

DCC recommendations:

(3) The engineer conducting a dam safety inspection shall prepare a written report which includes but is not limited to:

(v) A schedule for any corrective actions required to address identified deficiencies and to assure the safety of the dam. The department **must, within 30 days, either approve or amend** the schedule.

(b) Role of the Department.

(1) To assure adequate protection of public safety, property or natural resources, the department may make, retain an engineer to make, or direct a dam owner to retain an engineer to make an investigation of any dam. The investigation may be a dam safety investigation as in 673.7(a)(3), an engineering assessment as in 673.7(a)(4) or any additional engineering evaluation to confirm dam safety deficiencies presented in an engineering report or to confirm any other information received by the department.

DCC recommendations:

(1) To assure adequate protection of public safety, property or natural resources, the department may make **or retain an engineer to make an investigation of any dam; such an investigation shall be funded by the state-administered fund mentioned herein.** The investigation may be a dam safety investigation as in 673.7(a)(3), an engineering assessment as in 673.7(a)(4) or any additional engineering evaluation to confirm dam safety deficiencies presented in an engineering report or to confirm any other information received by the department.

(3) Within 30 days of the department creating an inspection report for a Class B or Class C dam, the department shall provide a copy of the inspection report to the dam owner and chief executive officer of the municipality in which the dam is located. The department will also

provide a copy of the inspection report to the chief executive officer in any other municipality in the same county or from an adjoining county but within the inundation area, upon written request from the chief executive officer.

DCC recommendations:

(3) Within 30 days of the department creating an inspection report for a Class B or Class C dam, the department shall provide a copy of the inspection report to the dam owner and chief executive officer of each county and each municipality located in the watershed and the inundation area of the dam. Inspections reports shall be disclosed to the public, and available to the public for review in the county and municipal offices.

(b) Role of the Department.

(2) Whenever in the judgment of the department public safety requires, the department may at its discretion and without prior notice, enter upon the lands and waters upon which a dam is located to investigate a dam. The department's investigation may include documentation of existing conditions including, but not limited to, photographs or videos.

DCC recommendation/clarification:

(2) Whenever in the judgment of the department public interest requires, the department may at its discretion and without prior notice, enter upon the lands and waters upon which a dam is located to investigate a dam. The department's investigation may include documentation of existing conditions including, but not limited to, photographs or videos.

673.8 Hearings and Enforcement.

(a) In addition to the power to issue a summary abatement order pursuant to ECL §71-0301, the department shall have the power, whenever in the judgment of the department it may be necessary to protect life, property or natural resources, after hearing on due notice, to issue an order, setting forth the findings of fact and conclusions there from, directing any owner:

DCC recommendations/clarifications:

(a) **Clarify highlighted phrase...***In addition to the power to issue a summary abatement order pursuant to ECL §71-0301, the department shall have the power, whenever in the judgment of the department it may be necessary to protect life, property or natural resources, **after hearing on due notice**, to issue an order, setting forth the findings of fact and conclusions there from, directing any owner:*

Testimony of
GAIL S. SHAFFER
P.O. Box 919, North Blenheim, NY 12131

My name is Gail Shaffer, and I am a lifelong resident of the Town of Blenheim in Schoharie County. Like many of my neighbors throughout the valley, our family were among the original Palatines who settled Schoharie Valley, and fought in the American Revolution. Our farm has been in our family for over a century. Our roots in this valley have great meaning for us, and for many others who have come more recently to call this valley home, and who treasure its historic heritage, its scenic beauty, its agricultural bounty, and its rural culture and strong sense of community.

Our town has the dubious distinction of living downstream from two sleeping giants, two enormous manmade dams. The older, and larger, of the two, built in 1926, is the Gilboa Dam at Schoharie Reservoir, owned and operated by the City of New York for water supply; with a storage capacity of 20 billion gallons, it is a masonry structure with earthen embankments as well. The more recent impoundment is the Blenheim / Gilboa hydroelectric project, owned and operated by the Power Authority of the State of New York (PASNY); it is a pumped storage facility built in the 1970's to supply power, at a net energy loss, to downstate New York during peak demand periods. With a storage capacity of 5 billion gallons, it is an earthen dam.

The Department of Environmental Conservation is well aware of the crisis created at the Gilboa Dam, due to decades of neglect on the part of the City of New York. This aging dam was allowed to deteriorate with virtually no significant maintenance, until its vulnerability came to light in October 2005, when weaknesses were discovered that triggered an emergency declaration. The adhesion between the concrete dam and the bedrock was seriously compromised, presenting the danger of the dam sliding forward and collapsing.

Should this worst case scenario occur, a giant wall of water would sweep rapidly through the valley, like a tsunami, sweeping in its path, from Gilboa to Schenectady, both the city's crumbled concrete dam and the state's earthen dam downstream, flooding Schoharie Valley with 25 billion gallons of water, along with many bridges, buildings, vehicles, power lines, livestock and more. The prime agricultural lands which have given Schoharie Valley the rubric of Breadbasket of the Revolution, would be destroyed. Historic and cultural resources --- from the Old Blenheim Covered Bridge (a national historic landmark) to the Old Stone Fort to Schenectady's Stockade District --- would be obliterated. Entire villages could be swept away, with devastating economic impact and immense loss of tax base for all three counties.

All of this does not even address the potential for loss of human lives, and the cultural loss of entire communities. Transportation in the region would be significantly disrupted

for months or years with the loss of bridges and highways. Public health threats would be widespread, due to damaged sewage facilities, as well as dead livestock and wildlife.

The sleeping giant has awakened, and the residents of three counties downstream --- Schoharie, Montgomery and Schenectady --- have become aware of the potential peril in which we live, should this worst-case scenario ever occur.

I grew up on a farm in Blenheim. Our family farm is on the mountain, far above the elevation of the flood plain and even far above the inundation area in a worst-case scenario. However, even for those of us on high ground, there would be nothing left of our community; the Schoharie Valley would be literally wiped out.

Since the emergency was declared, some progress has been made. NYCDEP (New York City Department of Environmental Protection), owner of Gilboa Dam, has undertaken substantial interim repairs to stabilize this fragile dam, primarily with the installation of 80 post tensioned anchors. They have committed to a major rehabilitation of the dam, a long-term project to begin next year and continue through 2014; they are currently in the design phase of that project.

The experience of our community over the past two and a half years, in confronting this potential nightmare, should be instructive to all communities living in the shadow of a dam. Our situation should provide some context for the actions which NYSDEC needs to undertake to strengthen dam safety regulations in New York, to ensure that there are no more Gilboas.

There are several amendments to the text of the proposed dam safety regulations which have been submitted by Dam Concerned Citizens, Inc, our non-profit grassroots citizens' organization. I support the recommendations of DCC.

I wish to highlight in particular a few significant recommendations.

The independence of engineers doing dam safety inspections and engineering assessments is paramount. Each dam owner should pay an assessed fee toward a state-administered fund to support independent inspections and engineering assessments, conducted by NYSDEC as the oversight agency or by their designees.

Self-regulation is a recipe for disaster. In the case of NYCDEP, it was even discovered that some employees charged with inspections had certified photocopies of previous reports rather than doing further periodic inspections. (To the City's credit, appropriate disciplinary actions were taken).

While certainly any dam owner should do its own internal inspections, it is imperative that NYCDEC as the oversight agency should be vigorously inspecting dams for safety. DEC professional staff should be expanded to meet this responsibility, by assessing fees that each dam owner would pay, based upon the classification and the condition of

the dam (according to a rating system as proposed by the DCC recommendations), toward a fund sufficient to provide for adequate monitoring.

In the event that consultant engineers are hired for such inspections or assessments, they should be hired by DEC, not by the dam owner, and accountable to DEC, so that there is no possibility for conflicts of interest.

All Class C (High Hazard) dam owners, whatever the primary purpose of the dam, have a responsibility to also assist, to the extent possible, with flood mitigation during severe weather events.

In light of what has happened, it is imperative that it be stated in regulation and in law that all dam owners --- whatever the primary purpose of a particular dam --- are also responsible to assist, to the extent possible, with flood mitigation.

Our initial experience dealing with NYCDEP was encountering a defensive, bureaucratic, rigid mindset. Throughout many months of dealing with the City of New York DEP, we encountered total resistance on their part to acknowledging any responsibility on their part to assist the downstream community in flood mitigation during severe weather events. They insisted that their charter was limited strictly to ensuring the water supply for New York City. It was not until, through our Congressman's intervention, these issues were elevated to the Mayor's office, that we made progress in this regard. The deputy mayor, in a visit to the dam, acknowledged that common sense requires a commitment on the part of NYC to cooperate with the host communities in alleviating the challenges to life and property posed by high water episodes.

Similarly, the State Power Authority has stated that their sole purpose under their federal charter is for power generation, and they cannot acknowledge any responsibility for flood mitigation. In recent years they have, in spite of this policy position, tried to assist with preemptive releases in anticipation of extreme weather events; nevertheless, this is dependent upon the good will of the management in place at the time.

The experience of the Mohawk Valley with the Canal Corporation is similar. As owner and operator of the locks, the agency maintains that its sole responsibility is navigation. In an extreme flood in 2006, they refused to assist with flood mitigation. Had they been more flexible, they could have helped reduce the tremendous damage inflicted by the storm.

In each of these cases --- one a drinking supply reservoir, one a power generation plant, one a series of locks for navigation of a major waterway --- the outcome of a major storm event can be significantly impacted by the willingness, or unwillingness, of the dam (or lock) owner to look beyond the narrow confines of their primary purpose. They need to acknowledge that they are an integral part of a broader community and a broader ecosystem, that they are borrowing the water from that resource for their purposes, but that others share in the effects of that water resource as well, and that

with minimal inconvenience to their operations, they can proactively do their part to avert disaster in the river valley or watershed which they are fortunate enough to be utilizing, by assisting, to the extent possible, in flood mitigation.

This should no longer be left to the whim of particular individuals, or the good graces of a particular political administration of city or state government. It needs to be stated in the regulatory framework that every dam owner does have some responsibility, regardless of the primary purpose of the dam, to assist with flood mitigation. If the city of New York tomorrow has a new mayor with a different attitude, that should not alter the policy of the city assisting with flood mitigation.

Of course, every dam will be limited by its design and technology in what measures it can undertake to contribute to flood mitigation. Certainly one of the unfortunate limitations at Gilboa has been the lack of operational low-level outlet mechanisms. The valves that were initially installed that might have enabled this were neglected for many decades of disuse and became inoperable. Fortunately, the design for the dam renovation will incorporate a low level outlet mechanism.

While we realize that it is impractical to mandate retrofitting all existing dams, we are proposing that whenever a Class C dam undergoes such a major renovation, design features should be incorporated, as appropriate, to enhance the capacity for flood mitigation.

Given the significant potential impact on life and property of dam deficiencies, particularly of Class C (High Hazard) dams, it is imperative that the dam safety regulations, throughout the text, strengthen requirements for public disclosure: of inspection reports, of engineering assessments, etc.

One of the most frustrating aspects of our experience with the situation at Gilboa Dam has been the difficulty of access to timely and accurate information. The public's right to know --- and their elected officials' right to know --- of irregularities or concerns which may arise, is important. In this case, the NYCDEP has often refused to share information, and even denied requests of elected officials to examine the full record of safety inspections, sometimes even by spurious invocation of anti-terrorist measures in the Patriot Act. The dam safety regulations should, throughout the text, at every opportunity, establish and reinforce the right of the public, and of elected officials, to such information.

One case in point, in Part 673.7 (b) (1): It is important not to put the burden on affected municipalities to request these reports. Each county and each municipality that is in the affected area (not just the inundation area, but also the watershed area) should be on the distribution list to receive regular reports of inspections and engineering assessments, not just the municipality or county in the immediate vicinity of that dam.

No new Class C (High Hazard) earthen dams shall be constructed in New York State, above certain threshold parameters.

Given the greater vulnerability of an earthen dam, we should avoid the risk of building further earthen dams of substantial volume and/or height.

One example is the Power Authority dam in Blenheim. The Power Authority has enormous financial resources, and makes a profit from the power generated at the Blenheim/Gilboa project. This dam was built in the era preceding many current public participation requirements. Were it built today, the proposal to reduce costs by building a mere earthen dam to impound 5 billion gallons of water (particularly downstream of Gilboa dam, with another 20 billion gallons impounded) would probably not pass muster.

A dam of this magnitude should obviously be a masonry structure.

Furthermore, when the Power Authority presented the design for this dam, they said that the earthen embankment would be anchored by trees and other plants. That commitment has never been implemented; the embankment is a large pile of rocks, unanchored by any plant growth whatsoever.

Perhaps the most appropriate threshold to use would be, parallel to the language in Part 673.4 regarding permits for dams:

Any new Class C dam constructed (a) at a height equal to or greater than 15 feet, and with a maximum impoundment capacity greater than one million gallons, or (b) with a maximum impoundment capacity equal to or greater than three million gallons, and a height equal to or greater than six feet, shall be of masonry construction.

The NYSDEC, as oversight agency with the responsibility for ensuring the safety of dams, should not be exempt from all liability in the event of damages to life and property due to a dam failure.

If NYSDEC, through the aforementioned state fund, has expanded resources and sufficient professional staff (unlike the present budget) to provide appropriate oversight for dam safety, it should be accountable for performing that function. There should be no blanket exemption for the state, in the event that negligence leading to disaster should occur.

~~~ IN CONCLUSION ~~~

In addition to and in furtherance of the recommendations outlined above, I fully support the detailed recommendations submitted by Dam Concerned Citizens (DCC), the Schoharie County Board of Supervisors, and urge the Department of Environmental Conservation to incorporate each of those proposed amendments and additions in its final dam safety regulations.

Gail Shaffer

Testimony of  
**Howard Roger Bartholomew**

In this, the eighth year of the 21st century, our country finds itself with an aging infrastructure that is both privately and publicly owned. We are meeting here today to express our ideas and opinions on some proposed changes in dam safety regulations.

Dams comprise a vital part of our nation's infrastructure. When dams are well maintained and operated in a responsible manner, they provide society with many benefits. To paraphrase a statement made by George Washington, "Dams like fire make a useful servant, but a frightful master". The word "dams" was substituted for government in this altered quotation. The causes of this transition from beneficial utility to public menace are both manifold and obvious. Neglect, changes in long term quantities of precipitation, improper, infrequent or inadequate inspection are but a few of the causes for possible or actual dam failure. It is not our purpose during this brief commentary to delve into specific issues of dam design or maintenance, but rather to make some broad suggestions regarding what we perceive to be the proper role of government in the dam inspection process.

Many recent events point to the need for government to play a real and effective role in overseeing and regulating activities for the public good. The collapse of a portion of a bridge connecting Minneapolis and St. Paul, Minnesota last summer, failure of several levees in New Orleans during Hurricane Katrina, and the collapse of a construction crane in NYC in March of this year all point to the carnage and property damage inflicted on a hapless society when inspections are inadequately performed.

Many of us have seen the T.V. commercial featuring dam inspectors, bedecked in their yellow "hard hats" placing chewing gum over a hole in a leaking dam. This eye catching ad panders to a public skepticism that government should take seriously. A headline posted on Sunday, April 27, 2008 documented the astounding fact that recently repaired flood walls in New Orleans had their expansion joints filled with compressed newspaper rather than the mandated rubber gaskets. One reason for this outrageous crime is inadequate government oversight. In reading the NYSDEC report on the reasons for the Hadlock Pond Dam Collapse, we are told the cause of the dam failure was internal erosion of the newly built dam. I would say to you this morning, there is an equally significant erosion in the public trust in the willingness and/or ability of government to exercise its regulatory muscle to protect the tax paying public.

In the wake of the emergency repairs and on going rehabilitation at Gilboa, NY, a joke circulating among residents of the Schoharie Valley is similar to one expressed by industrial laborers of the Old Soviet Union. When asked by a foreign visitor about the state of the Russian economy, a worker replied, "the government pretends to pay us and we pretend to work". In the case of the Gilboa Dam the story line was that NYSDEC pretended to inspect the dam and NYCDEP pretended to maintain it. Such

cynicism is not good, but the fault lies more with governments that failed to perform their expected duties than it does with a frustrated and skeptical public.

If adequate changes are to be made in the dam inspection process that will help to restore public confidence in government, three words laden with important concepts emerge. They are “integrity”, “accountability” and “transparency”. The public should have reason to trust inspection results. Those making the inspections should be held accountable, along with the dam owners, should a dam failure occur after a dam has been given “a passing grade”. The results of dam inspections should be made public. Keeping the facts about the conditions of a dam secret, as was the case when NYS Senator John Bonacic was denied access in 2005, in the name of national security, is outrageous.

Part 673.3-General Provisions-(c) of the DEC proposed Dam Safety Rules and Regulations undermine any ideal or goal to achieve accountability. It states and I quote, “No action shall be brought against the department or its agents for the recovery of damages caused by the partial or total failure of any dam or through the operation of any dam upon the ground that the department is liable by virtue of any of the following:

- (1) the approval of the application, plans, or specifications for any dam project;
- (2) issuance or enforcement of any administrative or judicial orders relative to maintenance or operation of a dam’
- (3) control, regulation, and/or inspection of a dam;
- (4) measures taken to protect against dam failure during an emergency; or
- (5) measures taken to address a dam failure during or immediately after an emergency.

This statement is a blatant evasion on the part of a state agency supported by public monies to insulate itself and its subordinates from any liability, should a dam failure, such as that at Hadlock Pond or God forbid, Gilboa, occur. In World War II parachute packers for U.S. paratroopers were expected to jump out of a plane once a week using a “chute”, picked at random, that they had packed. This is a demonstration of real accountability.

We are asking for an assumption of, not an evasion of, responsibility on the part of the NYSDEC in terms of the inspection of dams. Trying to pass on the “hot potato” by shifting the burden of dam inspection on to dam owners or by hiding from such liability an agency legitimately incurs in the event of malpractice on the part of that agency through a legal loophole, such as stated in rule 673.3, section (c) previously mentioned, is an affront to public decency. We are all aware that doctors, lawyers, mechanics, contractors, virtually every entity in our society can be held legally accountable for their work. Why then should government and its agents be exempt from the very rules the rest of society abides by?

Outsourcing or the privatization of dam inspection procedures is not the answer to dam inspection on NYState. All one has to do is go to any computer and “google” Walkerton, Ontario, Canada if you wish to see the results of privatizing a responsibility legitimately belonging to government. In an effort to cut costs and reduce government

bureaucracy, the newly elected provincial government of Ontario in the late 1990's allowed municipalities to out source the treatment of drinking water to private contractors. As a result of this experiment, with its lack of government oversight and other interference, as viewed by the new regime, 8 people died from salmonella, after drinking improperly treated and inadequately inspected water.

Government does have a legitimate role to play in dam inspections. In a state where the wearing of a helmet is mandated for riders of bicycles, its hard to comprehend the vague nature of most sections of the law when relating to dam safety. Perhaps a solution to the problem of dam regulations and measures to ensure dam safety will require legislative action. Adequate funding should be provided by the State, to match contributions of dam owners as recommended by Dam Concerned Citizens in part 673.7 Inspection Process-(a) Role of the Dam Owner-Number (2) and I quote their recommendation:

(2) all dam owners shall contribute to a state-administered fund to provide for independent engineers to perform periodic dam safety inspections and engineering assessments. The amount paid by each dam owner shall be related to the conditions of the dam, the dam classification and a rating assigned under a dam rating system.

By having the State provide matching funds, the fiscal burden placed on dam owners would be reduced and the public would be assured of having a good, honest, reliable inspection performed. In the case of the study of the Hadlock Pond Dam Failure, Clough Harbor and Associates was subject to a peer review by the engineering firm of O'Brien-Gere. It is said that vision in hind sight is 20/20, but how much better it would have been for all concerned, in this case (Hadlock Pond Dam failure), had the design of the dam been subjected to a peer review before the failure occurred.

A statement variously attributed to Goethe or Santyana goes like this; "those who cannot remember the past are condemned to repeat it". Let us hope that this is not the case with dam inspection.

As a member of the Dam Concerned Citizens' Board of Directors, I thank you for the opportunity to testify today and concur with the testimony given by both the Schoharie County Board of Supervisors and Dam Concerned Citizens, Inc.

Howard R. Bartholomew

Testimony of  
**Evann Bennett**  
Corresponding Secretary

My name is Evann Bennett and I am a member of both the American Legion and the Veterans of Foreign Wars. In my capacity as a member of the American Legion and V.F.W. I am very concerned about a report that appeared in many newspapers in upstate N.Y. at the beginning of the Gilboa Dam Crisis in 2005. The basis of this article, of which I have a copy, was that NY State Senator John Bonacic was denied, by DEC, a Freedom of Information Law request for inspection records of high hazard dams. This information would have allowed the public to know "first hand" what the condition of the Gilboa Dam was, at a time when there was great public anxiety. To think that the DEC would deny a member of the NY State legislature the right to tell the people of the Catskill region the real condition of the dams they live down stream of is unbelievable.

Over 4000 brave men and women have died in Iraq fighting for the very constitutional rights that DEC denies a U.S. Citizen, a State Senator, no less. All this was done in the name of protecting us from terrorism, as DEC feared public disclosure would endanger national security. Shame, shame, shame! Hiding facts from the public in the name of national security while our brave service people are dying to protect our freedom guaranteed by the 1st amendment to the constitution is wrong.

While I am on the subject of the VFW, our hall located on Route 30, south of Middleburgh, NY, frequently is inundated due to flooding of the Schoharie Creek because the NY State Department of Transportation allowed both route 30 and route 145, located West of the village of Middleburgh, NY, to be raised. These two roads acts like dikes and in the case of our V.F.W. Hall, which was in place before Rt. 30 was raised in the early 1970's, actually raised the water levels in our building during times of flooding to the point that the building is being elevated/reconstructed.

I would like to ask that the DEC consider classifying certain roads as Class B dams and think about regulating road elevations since roads can act like dams when located near a stream or river.

On a lighter note, I want you to know that I am 78 and a great grandmother. The last thing I want is to leave my children, grand children and great grandchild with the threat of flooding or failure of the Gilboa Dam.

As a member of the Board of Directors of Dam Concerned Citizens and the Corresponding Secretary, I thank you for allowing me to make my feelings known and I approve and agree with the testimony given here today by both the Dam Concerned Citizens and The Schoharie County Board of Supervisors.

Evann Bennett