

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: WALL STREET INVESTMENTS, LLC FILE NOs.: Dam State I.D. 104 and
OCI-DAMS-22-17**

NOTICE OF VIOLATION

A. INTRODUCTION

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On 20 June 2011, RIDEM issued a Notice of Violation to the former owner of the dam that is the subject of this Notice of Violation (“NOV”) for an inoperable low-level outlet (“LLO”) at the dam. On 6 October 2015, RIDEM issued an approval to Carl F. Benevides (“Benevides”) to repair the LLO, which was repaired in 2016. Respondent currently owns the dam, and Benevides is the manager for Respondent. As such, Benevides (and Respondent) knew or should have known that maintaining the LLO in proper working order is necessary to comply with Rhode Island’s *Rules and Regulations for Dam Safety* (250-RICR-130-05-1) (“Dam Safety Rules”). On 31 October 2022, RIDEM observed Respondent’s representative attempt to operate the LLO. During the attempt, the stem for the LLO broke, and the LLO could not be operated. RIDEM’s inspector spoke with Benevides by telephone at the time of the inspection and informed Benevides that the LLO was inoperable and required repair. Benevides stated that he would contact RIDEM soon to discuss how to proceed with the repair. As of the date of the NOV, Respondent has not contacted RIDEM and has not applied to RIDEM to repair the LLO.

C. FACTS

- (1) The property includes a dam identified as Bleachery Pond Dam, State Identification Number 104 (“Dam 104”), located approximately 400 feet southwest of the intersection of Chapel Lane and Walker Street, approximately 300 feet southeast of Walker Street, Assessor’s Plat 2, Lot 88 (“Lot 88”) and Plat 2, Lot 92 (“Lot 92”) in Lincoln, Rhode Island (“Property”).
- (2) Respondent owns the Property. Respondent acquired Lot 88 on 10 July 2013 and Lot 92 on 25 August 2015.

- (3) Dam 104 is classified by RIDEM as High Hazard.
- (4) On 28 March 2022, Dam 104 was inspected by RIDEM's consultant engineer, PARE Corporation ("PARE"). During the inspection, Respondent's representative informed PARE that he had not operated the LLO and was uncomfortable attempting to operate it.
- (5) On 31 October 2022, RIDEM met with Respondent's representative at Dam 104 to observe the operation of the LLO. During the operation of the LLO, the crank sheared off the stem piece.
- (6) RIDEM considers Dam 104 unsafe because of the findings in subsection C (5) above.

D. VIOLATION

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **Dam Safety Rules, Part 1.6(A)** – requiring the owner of a high hazard dam to maintain the dam in a safe condition.

E. ORDER

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Within 60 days of receipt of the NOV**, retain a professional engineer fully registered in the State of Rhode Island, who is experienced with dam inspections, design, construction, and repair ("Dam Engineer").
- (2) **Within 90 days of receipt of the NOV**, the Dam Engineer must complete an assessment of the LLO and submit a report of the findings to RIDEM. The report must specify the actions necessary to make the LLO operable and include a schedule to complete the work. For any proposed repairs, the report must include an application prepared in accordance with the Dam Safety Rules, Part 1.10(B).
- (3) The application and schedule required above shall be subject to RIDEM's review and approval. Upon review, RIDEM shall provide written notification to Respondent either granting formal approval or stating the deficiencies therein. **Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies**, Respondent shall submit to RIDEM a modified report, application, and/or schedule or additional information necessary to correct the deficiencies.
- (4) Commence work specified in the schedule approved by RIDEM within 20 days of approval (unless otherwise expressly authorized by RIDEM in writing to commence work later) and complete such work in accordance with the approved schedule.

F. PENALTY

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$2,000

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Rules") and must be paid to RIDEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:
- (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:
- Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767.
- (b) By wire transfer in accordance with instructions provided by RIDEM.
- (3) Penalties assessed against Respondent in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if RIDEM determines that reasonable efforts have been made to comply promptly with the NOV.

G. RIGHT TO ADMINISTRATIVE HEARING

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before RIDEM's Administrative Adjudication Division regarding the allegations and/or orders set forth in Sections B through F above. All requests for hearing MUST:
- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b).

- (b) Be **RECEIVED** by RIDEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
RIDEM - Administrative Adjudication Division
235 Promenade Street, Room 350
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of Rhode Island's *Rules and Regulations for the Administrative Adjudication Division* (250-RICR-10-00-1).
- (2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmits, Esquire
RIDEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before RIDEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the Town of Lincoln, Rhode Island wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 46-19-4(c), as amended.
- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, please have your attorney contact Christina Hoefsmit of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772023 or at christina.hoefsmit@dem.ri.gov. All other inquiries should be directed to Stacey Pinto of RIDEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777409 or at stacey.pinto@dem.ri.gov.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

By: _____
David E. Chopy, Administrator
RIDEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

WALL STREET INVESTMENTS, LLC
c/o Brian LaPlante, Esq., Resident Agent
78 Kenwood Street
Cranston, RI 02907

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Dam Safety
 File Nos.: Dam State I.D. 104 and OCI-DAMS-22-17
 Respondent: WALL STREET INVESTMENTS, LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) – Failure to Maintain Dam in a Safe Condition	Type I (\$1,000 Max. Penalty) *	Major	\$1,000	2 months	\$2,000
SUB-TOTAL					\$2,000

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE, OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that RIDEM has not incurred any additional or extraordinary costs during the investigation, enforcement, and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY RULES = \$2,000

PENALTY MATRIX WORKSHEET

CITATION: Failure to Maintain Dam in Safe Condition

VIOLATION NO.: D (1)

TYPE		
<input checked="" type="checkbox"/> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<input type="checkbox"/> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<input type="checkbox"/> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent has failed to maintain a key component of the dam (LLO) in a safe condition. The purpose of a LLO is to lower the water level behind a dam to relieve pressure on a dam, to provide additional storage of water for predicted hurricanes and other largescale storms, and to inspect the upstream embankment of a dam. Maintaining a high hazard dam in a safe condition is the primary objective of the Dam Safety Rules and the regulatory program. (2) Environmental conditions: The Property includes Bleachery Pond Dam, which is classified by RIDEM as High Hazard. A High Hazard dam is one where failure or misoperation will result in a probable loss of human life. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown – at least 2 months (but likely much longer). RIDEM’s inspection on 31 October 2022 revealed the failure of the LLO. Respondent’s representative informed PARE during PARE’s inspection on 28 March 2022 that he had not operated the LLO and did not feel comfortable attempting to operate it. (6) Areal extent of the violation: Considered, but not utilized for this calculation. (7) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by maintaining the LLO in proper working order. Upon information and belief, Respondent has taken no steps to mitigate the noncompliance, despite RIDEM’s inspector notifying Benevides of the noncompliance at the time of the 31 October 2022 inspection and Benevides stating that he would contact RIDEM to discuss how to proceed to repair the LLO. (8) Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce: Considered, but not utilized for this calculation. 		

(continued from the previous page)

- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had full control over the violation. The LLO failed due to improper/absent maintenance. The violation was foreseeable.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Benevides (and Respondent) knew or should have known that maintaining the LLO in proper working order is necessary to comply with the Dam Safety Rules.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000 \$1,000	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200