

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

IN RE: SOSCIA HOLDINGS, LLC

FILE NO.: OCI-FW-23-67

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 11 July 2022, RIDEM issued a letter (“July 11TH Letter”) to Respondent that was sent by electronic mail and by certified mail. The letter advised Respondent that it is required to comply with a law that was enacted on June 27, 2022. The letter explained that Respondent is required to apply to RIDEM for a permit to raise or lower the water level behind the dam and until such time as RIDEM issues a permit, operate the dam in a manner consistent with its historic use. On 14 July 2022, the letter was delivered. On 6 June 2023, RIDEM issued a letter (“June 6TH Letter”) to Respondent that was sent by certified mail. The letter advised Respondent of regulations that went into effect on 29 May 2023 to implement the new law and included a copy of the regulations. The regulations require Respondent to apply to RIDEM for a permit to raise or lower the water level behind the dam and until such time as RIDEM issues a permit, operate the dam in a manner consistent with its historic use. On 12 June 2023, the letter was delivered. As of the date of this Notice of Violation (“NOV”), Respondent has failed to comply with the law and regulations.

C. FACTS

- (1) Flat River Reservoir Dam, State Identification Number 167 (“Flat River Dam”) is located north of Reservoir Road and south of Flat River Road, in Coventry, Rhode Island (“Coventry”).
- (2) Respondent owns and operates Flat River Dam.
- (3) Respondent acquired ownership of Flat River Dam on 3 March 2020.
- (4) The stream below Flat River Dam is known as South Branch Pawtuxet River (“River”).

- (5) The water impounded behind Flat River Dam is known as Flat River Reservoir and/or Johnson's Pond ("Pond").
- (6) The Pond is not used for a public water supply system as defined in R.I. Gen. Laws §46-13-2.
- (7) The normal storage capacity of the Pond is 4,195-acre feet.
- (8) Flat River Dam is a jurisdictional dam as that term is defined in Part 1.5(A)(12) of Rhode Island's *Rules and Regulations for Dam Operation Permits* (250-RICR-130-10-1) ("DP Rules").
- (9) Flat River Dam includes a spillway ("Spillway") and low-level outlet control structure ("LLO"). Water from the Pond is released to the River by going over the Spillway or discharging through the LLO.
- (10) Prior to Respondent acquiring ownership of Flat River Dam, RIDEM had previously determined that the dam was historically operated in the following manner ("Historic Use"):

April 1- April 30

Maintain a minimum streamflow in the River of 215 cubic feet per second ("cfs") and gradually raise the water level in the Pond to 12 inches below Spillway level. If the streamflow in the River cannot be maintained at 215 cfs, lower the water level in the Pond until the River attains 215 cfs. If the water level in the Pond falls below 24 inches below Spillway level (that is, 25 inches, 26 inches, etc.), reduce the streamflow in the River to 100 cfs until the water level in the Pond reaches 24 inches below Spillway level. Once the water level in the Pond reaches 24 inches below Spillway level, maintain the water level in the Pond at 24 inches below Spillway level provided that a minimum streamflow in the River of 100 cfs is maintained. Raise the water level in the Pond above 24 inches below Spillway level (that is, 23 inches, 22 inches, etc.) provided that a minimum streamflow in the River of 215 cfs is maintained.

May 1 – May 31

Maintain a minimum streamflow in the River of 150 cfs and raise the water level in the Pond to Spillway level. If the streamflow in the River cannot be maintained at 150 cfs, lower the water level in the Pond until the River attains 150 cfs. If the water level in the Pond falls below 12 inches below Spillway level (that is, 13 inches, 14 inches, etc.), reduce the streamflow in the River to 60 cfs until the water level in the Pond reaches 12 inches below Spillway level. Once the water level in the Pond reaches 12 inches below Spillway level, maintain the water level in the Pond at 12 inches below Spillway level provided that a minimum streamflow in the River of 60 cfs is maintained. Raise the water level in the Pond above 12 inches

below Spillway level (that is, 11 inches, 10 inches, etc.) provided that a minimum streamflow of 150 cfs in the River is maintained.

June 1 – September 30

Maintain the water level in the Pond at Spillway level. If the water level in the Pond is below Spillway level, reduce the streamflow in the River to 40 cfs.

October 1 – October 31

Maintain a minimum streamflow in the River of 64 cfs and maintain the water level in the Pond between the Spillway level and 12 inches below the Spillway level. If the streamflow in the River cannot be maintained at 64 cfs, lower the water level in the Pond until 64 cfs in the River is attained. If the water level in the Pond falls below 36 inches below Spillway level (that is, 37 inches, 38 inches, etc.), reduce the streamflow in the River to 40 cfs until the water level in the Pond reaches 36 inches below Spillway level. Once the water level in the Pond reaches 36 inches below Spillway level, maintain the water level in the Pond at 36 inches below Spillway level provided that a minimum streamflow in the River of 40 cfs is maintained. Raise the water level in the Pond above 36 inches below Spillway level (that is, 35 inches, 34 inches, etc.) provided that a minimum streamflow in the River of 64 cfs is maintained.

November 1 – November 31

Maintain the water level in the Pond between 30 inches to 36 inches below Spillway level. If the water level in the Pond falls below 36 inches below Spillway level (that is, 37 inches, 38 inches, etc.), reduce the streamflow in the River to 64 cfs until the water level in the Pond reaches 36 inches below Spillway level.

December 1 – March 31

Maintain the water level in the Pond between Spillway level and 42 inches below Spillway level (except for a maximum period of 2 weeks when the water level in the Pond can be 50 inches below Spillway level) provided that a minimum streamflow in the River of 32 cfs is maintained. If the water level in the Pond falls below 42 inches below Spillway level (that is, 43 inches, 44 inches, etc.), limit the streamflow in the River to 32 cfs until the water level in the Pond reaches 42 inches below Spillway level.

Due to varying weather conditions, the stream flows in the River may be higher than or less than the values shown above.

- (11) From 9 January 2023 through approximately 16 May 2023, RIDEM received 16 complaints regarding low water levels in the Pond and concerns regarding the effect the low water level in the Pond is having on fish, wildlife, vegetation, and recreation.
- (12) On 17 May 2023, RIDEM inspected the Pond. The inspections revealed that the water level in the Pond was approximately 10.5 inches below Spillway level.
- (13) From 30 May 2023 through 7 June 2023, RIDEM received 5 complaints regarding low water levels in the Pond and concerns regarding the effect the low water level in the Pond is having on fish, wildlife, vegetation, and recreation.
- (14) On 7 June 2023, 15 June 2023, and 19 June 2023, RIDEM inspected the Pond. The inspections revealed that the water level in the Pond was approximately as follows:
 - (a) 7 June 2023– 14.5 inches below Spillway level.
 - (b) 15 June 2023 – Between 10 and 12 inches below Spillway level.
 - (c) 19 June 2023 – 6 inches below Spillway level.
- (15) Upon information and belief, the water level in the Pond was below Spillway level on June 1, 2023 (“June 1ST”).
- (16) RIDEM reviewed the USGS streamflow gauge data for the River¹, which revealed that the streamflow was approximately 58 cfs from June 1ST to June 14, 2023 (“June 14TH”) and approximately 70 cfs from June 15, 2023 (“June 15TH”) to June 23, 2023 (“June 23RD”).
- (17) As of the date of the NOV, Respondent has failed to operate Flat River Dam in a manner consistent with Historic Use.

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) **R.I. Gen. Laws Section 46-19.1-1 titled *Dam Permits*** – requiring the owner or operator of a dam that has the capacity to store greater than 1,400 normal storage acre feet of water to operate the dam in a manner that is consistent with historic use as determined by RIDEM until such time as a permit is issued by RIDEM, unless the dam impounds water for a public water supply system as defined in §46-13-2.

¹ Streamflow data referenced herein was obtained from the real-time stream flow for the River which is maintained by the USGS and publicly available at https://waterdata.usgs.gov/nwis/uv?site_no=01116000&legacy=1. Respondent was advised of the availability of the same.

- (2) **DP Rules, Part 1.7(A)** – prohibiting the owner or operator of a jurisdictional dam to operate the dam in a manner that is inconsistent with its historic use, as determined by RIDEM, until such time as a dam operation permit is issued.

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) **IMMEDIATELY** adjust the gates at the LLO to attain a streamflow in the River of 40 cfs.
- (2) **Until RIDEM issues a dam operation permit, from 1 June through 30 September**, unless it is necessary to protect the safety of Flat River Dam (see section E (4) below), only adjust the gates at the LLO if the water level in the Pond is below Spillway level and do so to attain a streamflow in the River consistent with the Regional Streamflow Approach for the Regional Rivers in accordance the letter RIDEM issued to Respondent on April 20, 2021, attached hereto and incorporated herein as Attachment A.
- (3) **Until RIDEM issues a dam operation permit, from 1 October through May 30**, unless it is necessary to protect the safety of Flat River Dam (see section E (4) below), only adjust the gates at the LLO in a manner consistent with the Historic Use, until such time as all required permits are issued by RIDEM.
- (4) Notwithstanding the ordered actions in sections E (2) or E (3) above, operate Flat River Dam in a manner that protects the safety of the dam at all times, provided however that any operations taken that vary from the ordered actions in sections E (2) or E (3) above are consistent with advice from a qualified engineer as defined in Part 1.5(A)(22) of Rhode Island's *Rules and Regulations for Dam Safety* (250-RICR-130-05-1) as necessary to protect the safety of the dam.

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:

\$23,000

- (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.
- (3) 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.
- (4) 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.
- (5) 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, orders and/or penalties 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, Suite 350
Providence, RI 02908-5767.
 - (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b).
 - (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:

Tricia Quest, 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 and any associated administrative penalty proposed in the NOV shall be final as to that respondent. 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) 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, you may contact (or if you are represented by an attorney, please have your attorney contact) Tricia Quest of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772408 or at tricia.quest@dem.ri.gov. All other inquiries should be directed to David E. Chopy of RIDEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777400 or at david.chopy@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:

SOSCIA HOLDINGS, LLC
c/o Richard E. Fleury, Resident Agent
33 College Hill Road
Building 20
Warwick, RI 02886

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Freshwater Wetlands
 File No.: OCI-FW-23-67
 Respondent: SOSCIA HOLDINGS 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) and D (2) – Failure to Operate Flat River Dam in Compliance with State Law and Regulations	Type I <i>(\$1,000 Max. Penalty)¹</i>	Major	\$1,000	23 days	\$23,000
<i>SUB-TOTAL</i>					\$23,000

¹ 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 = \$23,000

PENALTY MATRIX WORKSHEET

CITATION: Failure to Operate Flat River Dam in Compliance with State Law and Regulations
 VIOLATION NOs.: D (1) and D (2)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">_____ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">_____ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></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 failed to operate Flat River Dam in a manner consistent with Historic Use. Compliance with State law and regulations is of major importance to the regulatory program. (2) Environmental conditions: Considered, but not utilized for this calculation. (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 23 days (June 1ST – June 23RD). Prior to Respondent’s acquisition of Flat River Dam, the Pond was maintained at Spillway level from June 1 – September 30. RIDEM’s inspections revealed that the water level in the Pond was approximately 6 inches below Spillway level to 14.5 inches below Spillway level from June 1ST – June 19TH. RIDEM’s review of USGS records revealed that the streamflow in the River from June 1ST – June 14TH was approximately 58 cfs and from June 14TH to June 23RD was approximately 70 cfs, which is above the minimum Historic Use streamflow in the River of 40 cfs when the Pond is below Spillway level. 		
(continued)		

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- (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. The July 11TH Letter advised Respondent of the law requiring Respondent to operate Flat River Dam in a manner consistent with Historic Use until Respondent obtained a permit from RIDEM to operate the dam in a different manner. The June 6TH Letter advised Respondent of the regulations requiring Respondent to operate Flat River Dam in a manner consistent with Historic Use until Respondent obtained a permit from RIDEM to operate the dam in a different manner. The letters were delivered to Respondent; however, Respondent has failed to respond to or comply with the letters.
- (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.
- (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 complete control over the violation and the violation was foreseeable. RIDEM advised Respondent of its obligation to operate Flat River Dam in a manner consistent with Historic Use and in compliance with the law and regulations. Respondent's failure to comply was willful.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<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