

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: SOSCIA HOLDINGS, LLC

**FILE NOs.: Dam State I.D. No. 167
and OCI-DAMS-23-28**

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 31 January 2024, RIDEM issued correspondence (“Notice”) to Respondent by certified mail for the dam and the violations that are the subject of this Notice of Violation (“NOV”). The Notice required specific actions to correct the violations. On 6 February 2024, the Notice was delivered. As of the date of the NOV, Respondent has failed to comply with the Notice.

C. FACTS

- (1) The property includes a dam identified as Flat River Reservoir Dam, State Identification Number 167 (“Flat River Dam”), located approximately 250 feet north of Reservoir Road and approximately 1,000 feet south of Flat River Road, Assessor’s Plat 59, Lot 5 in Coventry, Rhode Island.
- (2) Respondent owns Flat River Dam.
- (3) Flat River Dam is classified by RIDEM as High Hazard.
- (4) Flat River Dam includes 3 low-level outlet pipes (“LLO Pipes”) and gates (“LLO Gates”).
- (5) On 28 July 2023, RIDEM received a report (“2023 Report”) of a visual inspection performed of Flat River Dam on 13 July 2023 that was prepared by Tighe & Bond on behalf of Respondent. Section 3.5 of the 2023 Report identifies several conditions at Flat River Dam that are unsafe or may be unsafe:
 - (a) Heavy vegetation observed along the downstream slope of the south embankment counterweight berm that prevented a visual inspection of the dam in this area.

- (b) Standing water in the secondary toe drain (“Secondary Toe Drain”) cleanout and seepage immediately downstream near a fallen birch tree.
 - (c) Movement/settlement at pier 2 of the spillway.
 - (d) No inspection of the LLO Pipes in the last 2 years. The last inspection of the LLO Pipes was conducted on 17 September 2021.
- (6) On 10 August 2023, RIDEM received electronic correspondence from Respondent’s attorney stating that “...my clients spent the day effecting a fix of the deficient condition affecting the spillway capstone beneath pier No. 2”. No other information has been provided to RIDEM.
 - (7) RIDEM considers Flat River Dam unsafe because of the findings described in section C (5)(a) above.
 - (8) RIDEM considers that Flat River Dam may be unsafe because of the findings described in sections C (5)(b) through (d) above.
 - (9) As of the date of the NOV, Respondent has failed to correct the issues set forth in section 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) **Rhode Island’s Rules and Regulations for Dam Safety (250-RICR-130-05-1) (“DS Rules”), Part 1.6(A)** – requiring the owner of a high hazard dam to maintain the dam in a safe condition.
- (2) **DS Rules, Part 1.11(A)(4)** – requiring the owner of a high hazard dam, to retain a qualified engineer to perform a detailed investigation of the dam, provide a schedule by which any work needed shall be accomplished, and complete all work required by RIDEM in a reasonable time frame required by RIDEM, whenever the findings of a visual inspection reveal, in the opinion of RIDEM, that the dam may be unsafe.
- (3) **DS Rules, Part 1.11(D)** – requiring that a report be prepared for a detailed investigation. If deficiencies are found, the report must identify the specific deficiencies and, when warranted, specify further investigation or corrective measures. The report, completed by a qualified engineer retained by a dam owner, must provide a recommended schedule to complete any work identified as necessary to correct the deficiencies noted in the report. Such reports must be provided to the dam owner and RIDEM within 60 days of the date of the detailed investigation.

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 30 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 30 days of receipt of the NOV**, cut or remove the vegetation from the area of Flat River Dam as described in section C(5)(a) above consistent with the recommendation in the 2023 Report in accordance with the DS Rules, Part 1.10(A). Cutting or removal shall be enough to allow a thorough visual inspection to be performed. RIDEM shall be notified upon commencement and completion of this work.
- (3) **Within 30 days of receipt of the NOV**, jet clean the Secondary Toe Drain consistent with the recommendation in the 2023 Report.
- (4) **Within 120 days of receipt of the NOV**, the Dam Engineer must complete the following in accordance with the DS Rules, Part 1.11 (C):
 - (a) A visual inspection of Flat River Dam in the area described in section C(5)(a) above consistent with the recommendation in the 2023 Report.
 - (b) A detailed investigation of the may be unsafe conditions described in sections C(5)(b) and C(5)(c) above consistent with the recommendations in the 2023 Report.
 - (c) A full dive inspection of the LLO Pipes to determine the condition of the pipes consistent with the recommendations in the 2023 Report.
 - (d) Submit a report of the findings of the inspections and investigation above to RIDEM. The report must include an analysis of the condition, strength and remaining useful life of the LLO Pipes and an opinion regarding the safe operation of the LLO Pipes and LLO Gates, based upon their current condition and the prior inspection reports, including the basis of said opinion and identification of the documents, reports, materials, or information reviewed or relied upon in reaching said opinion. If deficiencies are found, the report must identify the specific deficiencies and, when warranted, specify further investigation or corrective measures. The report must provide a recommended schedule to complete any work identified as necessary to correct the deficiencies noted in the report. If it is determined that Flat River Dam is unsafe based on the findings of the inspections and investigation above, the report must specify the actions necessary to return the dam to a safe condition and include a schedule to complete the work. For any proposed repairs, the report must include an application prepared in accordance with the DS Rules, Part 1.10(B).

- (5) The report, application, and/or schedule required above shall be subject to RIDEM's review and approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. **Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies**, submit to RIDEM a modified report, application, and/or schedule or additional information necessary to correct the deficiencies.
- (6) 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:

\$4,202

- (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, Room 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 this 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) An original signed copy of the NOV is being forwarded to Town of Coventry, 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 Tricia Quest of RIDEM's Office of Legal Services at (401) 222-6607 or tricia.quest@dem.ri.gov. All other inquiries should be directed to Patrick Hogan of RIDEM's Office of Compliance and Inspection at (401) 537-4449 or patrick.hogan@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: _____
Christina Hoefsmit, Deputy 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: Dam Safety
 File Nos.: Dam State I.D. 167 and OCI-DAMS-23-28
 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), D (2), and D (3) – Failure to address unsafe and may be unsafe conditions	Type I (\$1,000 Max. Penalty) *	Major	\$1,000	4 violations	\$4,000
SUB-TOTAL					\$4,000

*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.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Failing to retain engineer to perform a detailed investigation of the dam. The economic benefit of noncompliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts, and values used in this analysis are listed in this table.	<ul style="list-style-type: none"> ▪ Profit Status – For Profit ▪ Filing Status – C Corporation ▪ One-time Non-depreciable – \$15,000 Expense ▪ First Month of Non-compliance – June 2024 ▪ Compliance Date – 6 October 2024 ▪ Penalty Due Date – 15 July 2024 ▪ Discount Compound Rate – 8.1% 	
SUB-TOTAL		\$ 202

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 = \$4,202

PENALTY MATRIX WORKSHEET

CITATION: Failure to address unsafe and may be unsafe conditions

VIOLATION NOs.: D (1), D (2), and D (3)

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		
<small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<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 address unsafe and may be unsafe conditions at Flat River Dam. Flat River Dam is classified by RIDEM as High Hazard. Maintaining a High Hazard dam in a safe condition is the primary objective of the DS Rules and the regulatory program. (2) Environmental conditions: A High Hazard dam is one where failure or misoperation will result in a probable loss of human life. The inspection on 13 July 2023 revealed 4 unsafe or may be unsafe conditions at Flat River Dam. (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 approximately 11 months. The engineer inspected Flat River Dam on 13 July 2023 and identified the unsafe or may be unsafe conditions. (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 properly maintaining Flat River Dam. Respondent failed to take reasonable and appropriate steps to mitigate the noncompliance by retaining an engineer to assess the unsafe or may be unsafe conditions at the dam and submitting a report to RIDEM of the findings, despite receiving the Notice requiring Respondent to do so. (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 violation was foreseeable.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The maximum penalty that RIDEM could have assessed for the unsafe condition was \$330,000 (\$1,000 per day x 330 days (or 11 months)).

<input checked="" type="checkbox"/> MAJOR	<input type="checkbox"/> MODERATE	<input type="checkbox"/> MINOR
---	-----------------------------------	--------------------------------

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