



STATE OF RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
BUREAU OF ENVIRONMENTAL PROTECTION  
OFFICE OF COMPLIANCE AND INSPECTION  
235 Promenade Street, Suite 220  
Providence, RI 02908-5767

July 11, 2022

CERTIFIED MAIL

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

RE: Public Law Chapters 170 and 171 titled *An Act Relating to Waters and Navigation – Dam Permits*

Dear Mr. Fleury,

According to records reviewed by the Rhode Island Department of Environmental Management (“RIDEM”), SOSCIA HOLDINGS, LLC (“Soscia”) owns and operates Flat River Reservoir Dam, State I.D. Number 167 (“Flat River Dam”).

On June 27, 2022, Governor McKee signed a law titled *An Act Relating to Waters and Navigation – Dam Permits*, which became effective upon the Governor’s signature.

The law reads as follows:

*Any person who owns or operates a dam that has the capacity to store greater than one thousand four hundred (1,400) normal storage acre feet of water shall apply to the director of the department of environmental management for a permit to raise or lower the water level behind the dam. The owner or operator shall apply for a permit, and until such time as a permit is issued by the director, the owner or operator shall operate the dam in a manner that is consistent with historic use as determined by the director. The director may enforce this section in accordance with chapters 17.1 and 17.6 of title 42. This section shall not apply to dams that impound water for a public water supply system as defined in § 46-13-2. The department may promulgate rules and regulations to implement the provisions of this chapter.*

I have enclosed a copy of the law with this letter.

RIDEM reviewed its records and determined that the Flat River Dam has a storage capacity of 4,195 normal storage acre feet and does not impound water for a public water supply system as defined in the law. As such, Soscia, as the owner and operator of the dam, must obtain a permit from RIDEM to raise or lower the water level behind the dam.

RIDEM will promulgate regulations to implement the permit requirements of the law in accordance with Rhode Island General Laws (“R.I. Gen. Laws”) Chapter 42-35 titled *Administrative Procedures*, and Soscia will be provided a copy of the draft regulations for review and comment as RIDEM proceeds through the rule making process.

In the interim, RIDEM is required to determine that the Flat River Dam is being operated in a manner consistent with its historic use.

Based on a review of records for Flat River Dam, RIDEM believes that the dam has historically been operated in the following manner (“Historic Use”):

April 1 – April 30

Maintain a minimum streamflow 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 cannot be maintained at 215 cfs, lower the water level in the pond until 215 cfs is attained. If the water level in the pond falls below 24 inches below spillway level (that is, 25 inches, 26 inches, etc.), reduce the streamflow 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 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 of 215 cfs is maintained.

May 1 – May 31

Maintain a minimum streamflow of 150 cfs and raise the water level in the pond to spillway level. If the streamflow cannot be maintained at 150 cfs, lower the water level in the pond until 150 cfs is attained. If the water level in the pond falls below 12 inches below spillway level (that is, 13 inches, 14 inches, etc.), reduce the streamflow 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 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 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 to 40 cfs.

October 1 – October 31

Maintain a minimum streamflow 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 cannot be maintained at 64 cfs, lower the water level in the pond until 64 cfs 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 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 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 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 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 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 to 32 cfs until the water level in the pond reaches 42 inches below spillway level.

During dry periods, the water level in the pond and minimum streamflow may be less than the values shown above.

If RIDEM determines that the Flat River Dam is not being operated consistent with the Historic Use, the law authorizes RIDEM to assess penalties up to \$1,000 per day for each day of noncompliance.

RIDEM is providing an opportunity for any interested party, including Soscia, to submit additional information related to the historic operation of the Flat River Dam. RIDEM will review such information and make a final decision on the Historic Use per the requirements of this law.

Anyone wishing to submit information to RIDEM can send it electronically to [david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov) or by regular mail to the following address:

Rhode Island Department of Environmental Management  
Office of Compliance and Inspection  
235 Promenade Street, Room 220  
Providence, RI 02908-5767

RIDEM is requesting that any information be submitted by August 1, 2022.

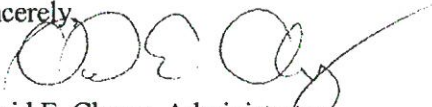
Please be advised that RIDEM inspected the Flat River Dam on June 30, 2022 and July 11, 2022. The inspections revealed that the water level in the pond was approximately 4 inches and approximately 13 inches below spillway level, respectively. RIDEM reviewed the United States Geologic Survey (“USGS”) streamflow gauge data for South Branch Pawtuxet River, which revealed that the streamflow has been approximately 60 cfs from June 20, 2022 to present. This is inconsistent with the Historic Use. Soscia should have reduced the streamflow to 40 cfs when the water level in the pond went below the spillway level and maintained the streamflow at 40 cfs until the water level in the pond reached the spillway level.

RIDEM was informed by the Town of Coventry solicitor that Soscia is maintaining the streamflow at 60 cfs to adjust for grass growth in South Branch Pawtuxet River. On November 3, 2021, RIDEM provided electronic correspondence to Soscia (copy enclosed) from USGS that stated there was no need to adjust for grass growth.

Lastly, RIDEM reviewed USGS stream gauge data for 7 other rivers within central and southern Rhode Island. As of today, the average median streamflow for these rivers based on up to 81 years of data is 31.4 cfs, and the average current streamflow is 19.1 cfs, which is approximately 60% of the average median streamflow. In RIDEM’s April 20, 2021 letter to Soscia (copy enclosed), RIDEM explained that during dry periods, it is acceptable to adjust the minimum streamflow to match the streamflow of these rivers. Using the streamflow of 40 cfs, 60% of streamflow calculates to 24 cfs [40cfs x 60%=24 cfs]. That means that under the current dry conditions, Soscia must reduce the streamflow from 40 cfs to 24 cfs.

Please be advised that if Soscia fails to comply with the Historic Use, RIDEM will issue a formal enforcement action, which will include penalties up to \$1,000 per day in accordance with the law beginning on June 30, 2022, which is the first day that RIDEM documented that Soscia was not operating the dam consistent with Historic Use.

Sincerely,



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

encs: Public Law Chapters 170 and 171

November 3, 2021 electronic correspondence from USGS to RIDEM

April 20, 2021 letter from RIDEM to Soscia

- cc. Benjamin Marchant, Town Manager, Town of Coventry, w/enclosures  
Marc Lemoi, President, Johnson Pond Civic Association, w/enclosures  
Ken Goodwin, Lease Liaison, Johnson Pond Civic Association, w/enclosures

**CHAPTER 170**  
**2022 -- S 2181 SUBSTITUTE A**  
**Enacted 06/27/2022**

**A N A C T**  
**RELATING TO WATERS AND NAVIGATION -- DAM PERMITS**

Introduced By: Senators Raptakis, Anderson, Rogers, Calkin, Archambault, Sosnowski, and Lombardo  
Date Introduced: February 08, 2022

It is enacted by the General Assembly as follows:

SECTION 1. Title 46 of the General Laws entitled "WATERS AND NAVIGATION" is hereby amended by adding thereto the following chapter:

CHAPTER 19.1  
DAM PERMITS

**46-19.1-1. Permits required for certain dams.**

Any person who owns or operates a dam that has the capacity to store greater than one thousand four hundred (1,400) normal storage acre feet of water shall apply to the director of the department of environmental management for a permit to raise or lower the water level behind the dam. The owner or operator shall apply for a permit, and until such time as a permit is issued by the director, the owner or operator shall operate the dam in a manner that is consistent with historic use as determined by the director. The director may enforce this section in accordance with chapters 17.1 and 17.6 of title 42. This section shall not apply to dams that impound water for a public water supply system as defined in § 46-13-2. The department may promulgate rules and regulations to implement the provisions of this chapter.

SECTION 2. This act shall take effect upon passage.

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LC003247/SUB A/2

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**CHAPTER 171  
2022 -- H 8205  
Enacted 06/27/2022**

**A N A C T  
RELATING TO WATERS AND NAVIGATION -- DAM PERMITS**

Introduced By: Representatives Noret, Hawkins, Costantino, Shallcross Smith, Ackerman, Nardone, Serpa, Roberts, and McNamara

Date Introduced: May 04, 2022

It is enacted by the General Assembly as follows:

SECTION 1. Title 46 of the General Laws entitled "WATERS AND NAVIGATION" is hereby amended by adding thereto the following chapter:

CHAPTER 19.1  
DAM PERMITS

**46-19.1-1. Permits required for certain dams.**

Any person who owns or operates a dam that has the capacity to store greater than one thousand four hundred (1,400) normal storage acre feet of water shall apply to the director of the department of environmental management for a permit to raise or lower the water level behind the dam. The owner or operator shall apply for a permit, and until such time as a permit is issued by the director, the owner or operator shall operate the dam in a manner that is consistent with historic use as determined by the director. The director may enforce this section in accordance with chapters 17.1 and 17.6 of title 42. This section shall not apply to dams that impound water for a public water supply system as defined in § 46-13-2. The department may promulgate rules and regulations to implement the provisions of this chapter.

SECTION 2. This act shall take effect upon passage.

=====  
LC005885  
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## Chopy, David (DEM)

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**From:** Chopy, David (DEM)  
**Sent:** Wednesday, November 3, 2021 5:25 PM  
**To:** Forcier, Susan (DEM); pjdoughertylaw@verizon.net; Nick Gorham; David Dagostino; Hogan, Patrick (DEM); Pinto, Stacey (DEM); Fitzpatrick, Thomas (DEM); Benjamin Marchant  
**Subject:** FW: USGS Gage Station

All, good afternoon. I followed up with the USGS to determine whether the flow at the gage station requires correction for grass growth. Below is the response I received.



**David E. Chopy, Administrator**  
**Rhode Island DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**  
**OFFICE OF COMPLIANCE & INSPECTION**  
**235 Promenade Street, Providence, Rhode Island 02908**  
**401.222.1360, NEW EXTENSION x2777400**  
[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)

**From:** Bent, Gardner C <gbent@usgs.gov>  
**Sent:** Monday, October 18, 2021 10:38 AM  
**To:** Chopy, David (DEM) <david.chopy@dem.ri.gov>  
**Cc:** Bumgarner, Johnathan R <jbumgarner@usgs.gov>; Stewart, Gregory J <gstewart@usgs.gov>  
**Subject:** Re: [EXTERNAL] : RE: [EXTERNAL] Re: Johnson's Pond

Hi Mr. Chopy,

Sorry for the delayed response.

The information in the Schedule C of the attached document, "Letter from Virginia DeLima, U.S. Geological Survey dated Oct. 18, 1993 to Mr. Joel Westerman, President, Quidnick Reservoir Company, is outdated.

Since Virginia DeLima, U.S. Geological Survey letter in 1993, the South Branch Pawtuxet River at Washington, RI (01116000) streamgage has been made "real-time" and current streamflow (i.e. discharge) data is available to the public on the web. The website to obtain "real-time" streamflow data for the South Branch Pawtuxet River at Washington, RI (01116000) streamgage is [https://waterdata.usgs.gov/ri/nwis/uv?site\\_no=01116000](https://waterdata.usgs.gov/ri/nwis/uv?site_no=01116000) [waterdata.usgs.gov](https://waterdata.usgs.gov). Historic 15-minute discharge data from 10-01-1990 to present is also available on the website, as well as daily mean discharge back to 10-01-1940 to present.

The 1993 letter (Schedule C) refers to corrections for grass growth in the river during the May to October, these corrections are made to the "real-time" data on the web within a few days following field visits to the site. The hydrographer makes periodic inspection and streamflow measurements throughout the year to maintain the stage-discharge rating curve for the site (i.e. the table in the letter). Additionally, these data are reviewed and approved within about 150 days following collection, until the data are approved - the data shown on the web is considered "provisional". So, for example in this plot of that last 90-days of data ([https://nwis.waterdata.usgs.gov/ri/nwis/uv?cb\\_00060=on&cb\\_00065=on&format=gif\\_default&site\\_no=01116000&period=90&begin\\_date=2021-08-19&end\\_date=2021-10-18](https://nwis.waterdata.usgs.gov/ri/nwis/uv?cb_00060=on&cb_00065=on&format=gif_default&site_no=01116000&period=90&begin_date=2021-08-19&end_date=2021-10-18) [nwis.waterdata.usgs.gov](https://nwis.waterdata.usgs.gov)), you can see

that streamflow have been approved through the field visit on August 11, 2021 and data since that is considered provisional.

I hope this helps. Please let me know if there are any further questions.

Thanks, Gardner

=====

Gardner Bent | Hydrologist

Office: 508-490-5041 | Cell: 774-249-1973 | [gbent@usgs.gov](mailto:gbent@usgs.gov)

U.S. Geological Survey - New England Water Science Center

10 Bearfoot Road, Northborough, MA 01532

<https://www.usgs.gov/centers/new-england-water> [[usgs.gov](https://www.usgs.gov)]

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**From:** Chopy, David (DEM) <[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)>

**Sent:** Friday, October 8, 2021 10:50 AM

**To:** Bent, Gardner C <[gbent@usgs.gov](mailto:gbent@usgs.gov)>; Bumgarner, Johnathan R <[jbumgarner@usgs.gov](mailto:jbumgarner@usgs.gov)>; Stewart, Gregory J <[gstewart@usgs.gov](mailto:gstewart@usgs.gov)>

**Subject:** RE: [EXTERNAL] : RE: [EXTERNAL] Re: Johnson's Pond

Mr. Gardner, hello. As requested. It is Schedule C of the attached document.

Thank you for your assistance.

Sincerely,



**David E. Chopy, Administrator**

R.I. Department of Environmental Management

Office of Compliance and Inspection

235 Promenade Street, Suite 220

Providence, Rhode Island 02908

P. 401.222.1360, NEW EXTENSION x2777400

**From:** Bent, Gardner C <[gbent@usgs.gov](mailto:gbent@usgs.gov)>

**Sent:** Friday, October 8, 2021 8:36 AM

**To:** Bumgarner, Johnathan R <[jbumgarner@usgs.gov](mailto:jbumgarner@usgs.gov)>; Stewart, Gregory J <[gstewart@usgs.gov](mailto:gstewart@usgs.gov)>; Chopy, David (DEM) <[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)>

**Subject:** Re: [EXTERNAL] : RE: [EXTERNAL] Re: Johnson's Pond

Hi Mr. Chopy,

Would you be able to send the letter from the USGS from 1993 that describes the method of relation between Flat River Reservoir and the USGS South Branch Pawtucket River streamgage?

It said it was attached in one of the emails in the chain but not when it got to me.

We will take a look at the methodology and get back to you as soon as possible after reviewing. I'm on leave today and Monday is a holiday so it wouldn't be until next Tuesday or Wednesday when I return.

Thanks, Gardner

U.S. Geological Survey  
New England Water Science Center

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**From:** Bumgarner, Johnathan R <[jbumgarner@usgs.gov](mailto:jbumgarner@usgs.gov)>  
**Sent:** Thursday, October 7, 2021 5:04:28 PM  
**To:** Bent, Gardner C <[gbent@usgs.gov](mailto:gbent@usgs.gov)>; Stewart, Gregory J <[gstewart@usgs.gov](mailto:gstewart@usgs.gov)>  
**Subject:** Fwd: [EXTERNAL] : RE: [EXTERNAL] Re: Johnson's Pond

Gardner and Greg,

Can you please discuss this inquiry and respond?

Thanks?

John

— — —

Johnathan Bumgarner  
Director  
New England Water Science Center  
U.S. Geological Survey  
O: 508.490.5010  
C: 508.330.9355  
[jbumgarner@usgs.gov](mailto:jbumgarner@usgs.gov)

---

**From:** Stackelberg, Paul E <[pestack@usgs.gov](mailto:pestack@usgs.gov)>  
**Sent:** Thursday, October 7, 2021 5:02:16 PM  
**To:** Bumgarner, Johnathan R <[jbumgarner@usgs.gov](mailto:jbumgarner@usgs.gov)>  
**Cc:** Barlow, Paul M <[pbarlow@usgs.gov](mailto:pbarlow@usgs.gov)>; Barbaro, Jeffrey R <[jrbarbar@usgs.gov](mailto:jrbarbar@usgs.gov)>; Chopy, David (DEM) <[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)>  
**Subject:** FW: [EXTERNAL] : RE: [EXTERNAL] Re: Johnson's Pond

Johnathan,

Can someone from the New England WSC assist David Chopy with his inquiry (see emails below)? I'm not in a position to answer his questions.

Thank you, -Paul

Paul Stackelberg  
U.S. Geological Survey – Water Mission Area  
Earth System Processes Division  
Water Resources Assessment Branch  
425 Jordan Road, Troy, NY 12180  
(518) 285-5652

**From:** Chopy, David (DEM) <[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)>  
**Sent:** Thursday, October 7, 2021 4:44 PM  
**To:** Stackelberg, Paul E <[pestack@usgs.gov](mailto:pestack@usgs.gov)>  
**Subject:** RE: [EXTERNAL] : RE: [EXTERNAL] Re: Johnson's Pond

Paul, hello. I didn't hear anything yet.

Sincerely,

David



**David E. Chopy, Administrator**  
R.I. Department of Environmental Management  
Office of Compliance and Inspection  
235 Promenade Street, Suite 220  
Providence, Rhode Island 02908  
P. 401.222.1360, **NEW EXTENSION x2777400**

**From:** Stackelberg, Paul E <[pestack@usgs.gov](mailto:pestack@usgs.gov)>  
**Sent:** Tuesday, September 21, 2021 4:37 PM  
**To:** Chopy, David (DEM) <[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)>  
**Subject:** [EXTERNAL] : RE: [EXTERNAL] Re: Johnson's Pond

David,  
I'm not the correct contact for this inquiry, but I have passed along your question to others. Please let me know if you have not received a response by the end of the week.

Thank you, Paul

Paul Stackelberg  
*U.S. Geological Survey – Water Mission Area  
Earth System Processes Division  
Water Resources Assessment Branch  
425 Jordan Road, Troy, NY 12180  
(518) 285-5652*

**From:** Chopy, David (DEM) <[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)>  
**Sent:** Tuesday, September 21, 2021 12:04 PM  
**To:** Stackelberg, Paul E <[pestack@usgs.gov](mailto:pestack@usgs.gov)>  
**Subject:** [EXTERNAL] Re: Johnson's Pond

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Mr. Stackelberg, good morning. I am the Administrator of Rhode Island DEM's Office of Compliance and Inspection. We are working on a case involving Flat River Reservoir, where the owner of the dam has been releasing water periodically to comply with a lease agreement with the Town of Coventry. The lease includes an exhibit (a letter from the USGS on October 18, 1993) to calculate the correct water flow readings at the USGS station within South Branch Pawtuxet River to account for weed growth. I am interested in knowing whether USGS believes the methodology described in the letter is still appropriate.

Sincerely,



**David E. Chopy, Administrator**  
Rhode Island DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF COMPLIANCE & INSPECTION  
235 Promenade Street, Providence, Rhode Island 02908  
401.222.1360, NEW EXTENSION x2777400  
[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)

**From:** Patrick J. Dougherty <[pjdoughertylaw@verizon.net](mailto:pjdoughertylaw@verizon.net)>  
**Sent:** Thursday, September 16, 2021 12:07 PM  
**To:** Chopy, David (DEM) <[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)>  
**Cc:** Forcier, Susan (DEM) <[susan.forcier@dem.ri.gov](mailto:susan.forcier@dem.ri.gov)>; Pinto, Stacey (DEM) <[stacey.pinto@dem.ri.gov](mailto:stacey.pinto@dem.ri.gov)>; Hogan, Patrick (DEM) <[patrick.hogan@dem.ri.gov](mailto:patrick.hogan@dem.ri.gov)>; Fitzpatrick, Thomas (DEM) <[Thomas.Fitzpatrick@dem.ri.gov](mailto:Thomas.Fitzpatrick@dem.ri.gov)>  
**Subject:** Re: [EXTERNAL] : Re: Johnson's Pond

Thank you for the opportunity to have the conference today.

Attached please find the 2009 Lease with Exhibits. Please note Schedule C regarding the weed factor and computing minimum streamflow. I have also attached a representative example for doing the calculations.

The case I referred to is *Ronci MFG. Co., Inc. v. State*, 403 A.2d 1094 (R.I. 1979).

This shall confirm that I will forward you a copy of the Dive Inspection Report from Tighe & Bond, probably by the beginning of next week.

Thank you,

Patrick

**Patrick J. Dougherty**  
Attorney at Law  
887 Boston Neck Road, Suite #1  
Narragansett, RI 02882  
Ph: 401-789-8400  
Fax: 401-789-8401  
Mobile: 401-787-7154  
[pjdoughertylaw@verizon.net](mailto:pjdoughertylaw@verizon.net)

-----Original Message-----

**From:** Patrick J. Dougherty <[pjdoughertylaw@verizon.net](mailto:pjdoughertylaw@verizon.net)>  
**To:** [david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov) <[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)>  
**Cc:** [susan.forcier@dem.ri.gov](mailto:susan.forcier@dem.ri.gov) <[susan.forcier@dem.ri.gov](mailto:susan.forcier@dem.ri.gov)>; [stacey.pinto@dem.ri.gov](mailto:stacey.pinto@dem.ri.gov) <[stacey.pinto@dem.ri.gov](mailto:stacey.pinto@dem.ri.gov)>; [patrick.hogan@dem.ri.gov](mailto:patrick.hogan@dem.ri.gov) <[patrick.hogan@dem.ri.gov](mailto:patrick.hogan@dem.ri.gov)>; [Thomas.Fitzpatrick@dem.ri.gov](mailto:Thomas.Fitzpatrick@dem.ri.gov) <[Thomas.Fitzpatrick@dem.ri.gov](mailto:Thomas.Fitzpatrick@dem.ri.gov)>  
**Sent:** Thu, Sep 2, 2021 11:52 am  
**Subject:** Re: [EXTERNAL] : Re: Johnson's Pond

Mr. Chopy,

I do have additional information and more responsive data and information to supply, but my work schedule was impacted the last two days due to yet another "emergency" motion by the Town of Coventry in the Superior Court litigation that DEM is obviously aware of and I will need several days to catch up with what piled up in the interim. The Superior Court validated my client's right to take the actions it did via bench decision issued by Judge Stern yesterday.

I believe it would be useful to have a meeting to discuss the issues raised in the email below and your previous one as well. In the meantime, I will assemble additional materials, data and information to provide to DEM.

My clients and I firmly disagree with your assertions regarding the purposes of the spillway and the LLOs and these assertions are contradicted by historical records pertaining to the operation of the dam on Johnson's Pond and the dam's design itself. The LLOs have always been used to manipulate the streamflow and level of the pond. If one were to rely only upon the spillway for discharge from the pond, there would be no way to ensure minimum streamflows. Moreover, the spillway has been damaged in the past from storms of the magnitude forecasted with the attendant rainfall. Furthermore, if one were to "wait and see" and rely on only the spillway to discharge water from a storm, without lowering the water first to allow for reserve capacity, there would be absolutely no manner available to control flooding and prevent inundation.

As evidenced by my client's responsible and prudent decisions and actions in anticipation of last night and today's Ida rainfall, their use of the LLO's and allowance for reserve capacity in the pond prevented the South Branch of the Pawtuxet from reaching flood stage and harming property downstream and also allowing for the level of Johnson's Pond to raise to higher levels without causing flooding of properties adjacent to the pond. My clients should not be faulted for acting responsibly prior to a Henri hurricane forecast, the track of which suddenly shifted to the West, thereby avoiding what was to be a significant onslaught of rain. The level of the pond is now rising and continuing to rise, as would have been the case if Henri were to have hit Coventry as forecasted by the National Weather Service watches and warnings.

A spillway does not in any manner safely convey water, it merely allows it to pass over it in an uncontrolled manner. Insofar as your assertion that the use of the LLOs poses a safety risk to the dam, this is unfounded. The cast iron LLO pipes are rated by our engineers in "fair to good condition" and are also encased in 24" of concrete and a recent comprehensive dive inspection has shown that they have not deteriorated since the last dive inspection in 2018. When the report has been completed, DEM will be provided a copy of it for your review.

When can we meet?

Sincerely,

Patrick

**Patrick J. Dougherty**  
**Attorney at Law**  
**887 Boston Neck Road, Suite #1**  
**Narragansett, RI 02882**  
**Ph: 401-789-8400**  
**Fax: 401-789-8401**  
**Mobile: 401-787-7154**  
[pjdoughertylaw@verizon.net](mailto:pjdoughertylaw@verizon.net)

-----Original Message-----

From: Chopy, David (DEM) <[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)>

To: Patrick J. Dougherty <[pjdoughertylaw@verizon.net](mailto:pjdoughertylaw@verizon.net)>

Cc: Forcier, Susan (DEM) <[susan.forcier@dem.ri.gov](mailto:susan.forcier@dem.ri.gov)>; Pinto, Stacey (DEM) <[stacey.pinto@dem.ri.gov](mailto:stacey.pinto@dem.ri.gov)>; Hogan, Patrick (DEM) <[patrick.hogan@dem.ri.gov](mailto:patrick.hogan@dem.ri.gov)>; Fitzpatrick, Thomas (DEM) <[Thomas.Fitzpatrick@dem.ri.gov](mailto:Thomas.Fitzpatrick@dem.ri.gov)>

Sent: Wed, Sep 1, 2021 3:59 pm

Subject: RE: [EXTERNAL] : Re: Johnson's Pond

Mr. Dougherty, good afternoon. Thank you for your letter. I am concerned about the answers you provided to questions 1 and 2. Specifically, the following statements:

1. Soscia Holdings, LLC was concerned about the rain and wind that hurricane Henri was forecasted to bring. As you know, wind can uproot trees that can block the spillway and impair the spillway's ability to discharge water. Also, flash flooding was a great concern for dam safety.
2. It is important to note that once the water goes over the spillway, Soscia Holdings, LLC loses control of the release. Every effort was made to stay in control of the release of water and prevent loss of life and property of downstream and upstream residents.

The purpose of the spillway is to be the primary means of conveying water downstream of the dam. The spillway is able to safely convey at least up to the 500 year storm, which is equivalent to 10.1 inches of rainfall in 24 hours, and still maintain 3.4 feet of freeboard. The highest projected rainfall for TS Henri was 8 inches total.

The purpose of the low level outlet (LLO) is to lower the water level to inspect the upstream embankment of the dam or to respond to emergency conditions at the dam. Specifically,

1. The condition of the embankment is such that the dam poses an unreasonable risk of failure, and it is necessary to lessen the pressure on the dam; or
2. The spillway is unable to safely convey the water downstream, such as from trees or debris blocking the spillway or the volume of water is greater than the spillway is designed to convey.

You provided no information that either of these emergency conditions were present for this storm.

The LLO is not designed to be the primary means of controlling the water level, and DEM is concerned that using it in this manner poses a safety risk to the dam.

While lowering the water level may reduce flooding downstream, it alters the freshwater wetlands above and below the dam. Rhode Island's *Freshwater Wetlands Act* and *Dam Safety Act* and the rules promulgated pursuant to these laws do not allow a dam owner to alter a wetland without a permit from DEM, unless it is necessary for the safety of the dam.

You acknowledged that the water level was approximately 12 inches below the spillway when the decision was made to lower the water level further. Soscia Holdings could have (and arguably should have) monitored the dam and spillway and only operated the LLO if the spillway was not able to safely convey the water.

DEM's investigation is still ongoing.

If you have any additional information you would like to provide, DEM is willing to review it. If you would like to have a call to discuss this further, DEM is available to do so.

Sincerely,

**David E. Chopy, Administrator**  
**Rhode Island DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**  
**OFFICE OF COMPLIANCE & INSPECTION**  
**235 Promenade Street, Providence, Rhode Island 02908**  
**401.222.1360, NEW EXTENSION x2777400**  
**[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)**

**From:** Patrick J. Dougherty <[pjdoughertylaw@verizon.net](mailto:pjdoughertylaw@verizon.net)>  
**Sent:** Friday, August 27, 2021 9:10 AM  
**To:** Chopy, David (DEM) <[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)>  
**Cc:** Forcier, Susan (DEM) <[susan.forcier@dem.ri.gov](mailto:susan.forcier@dem.ri.gov)>; Pinto, Stacey (DEM) <[stacey.pinto@dem.ri.gov](mailto:stacey.pinto@dem.ri.gov)>; Hogan, Patrick (DEM) <[patrick.hogan@dem.ri.gov](mailto:patrick.hogan@dem.ri.gov)>  
**Subject:** Re: [EXTERNAL] : Re: Johnson's Pond

Attached please find the response of Soscia Holdings, LLC to the inquiry detailed below. Thank you for the additional time extended. If you would like further clarification or back up to the assertions made, please send me any such request and I will be happy to comply.

Please be advised that I will be out of the office and away from email today. Therefore, I will be unavailable to respond until the weekend or Monday.

Thank you,

Patrick

**Patrick J. Dougherty**  
**Attorney at Law**  
**887 Boston Neck Road, Suite #1**  
**Narragansett, RI 02882**  
**Ph: 401-789-8400**  
**Fax: 401-789-8401**  
**Mobile: 401-787-7154**  
**[pjdoughertylaw@verizon.net](mailto:pjdoughertylaw@verizon.net)**

-----Original Message-----

**From:** Chopy, David (DEM) <[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)>  
**To:** Patrick J. Dougherty <[pjdoughertylaw@verizon.net](mailto:pjdoughertylaw@verizon.net)>  
**Cc:** Forcier, Susan (DEM) <[susan.forcier@dem.ri.gov](mailto:susan.forcier@dem.ri.gov)>; Pinto, Stacey (DEM) <[stacey.pinto@dem.ri.gov](mailto:stacey.pinto@dem.ri.gov)>; Hogan, Patrick (DEM) <[patrick.hogan@dem.ri.gov](mailto:patrick.hogan@dem.ri.gov)>  
**Sent:** Tue, Aug 24, 2021 5:58 pm  
**Subject:** RE: [EXTERNAL] : Re: Johnson's Pond

Attorney Dougherty, sorry to hear of your hardship. A response by end of day Friday is fine.



Sincerely,

**David E. Chopy, Administrator**  
R.I. Department of Environmental Management  
Office of Compliance and Inspection  
235 Promenade Street, Suite 220  
Providence, Rhode Island 02908  
P. 401.222.1360, **NEW EXTENSION x77400**

**From:** Patrick J. Dougherty <[pjdoughertylaw@verizon.net](mailto:pjdoughertylaw@verizon.net)>  
**Sent:** Tuesday, August 24, 2021 3:47 PM  
**To:** Chopy, David (DEM) <[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)>  
**Cc:** Forcier, Susan (DEM) <[susan.forcier@dem.ri.gov](mailto:susan.forcier@dem.ri.gov)>; Pinto, Stacey (DEM) <[stacey.pinto@dem.ri.gov](mailto:stacey.pinto@dem.ri.gov)>; Hogan, Patrick (DEM) <[patrick.hogan@dem.ri.gov](mailto:patrick.hogan@dem.ri.gov)>  
**Subject:** [EXTERNAL] : Re: Johnson's Pond

Dear Mr. Chopy,

I will be responding to your inquiry in detail, but would appreciate it if you would kindly give me a day to respond. Both my home and office were adversely impacted by Henri and I am in need of the additional time to assemble the data and information as I have been largely away from the office the last few days. My area of Rhode Island received almost 4 inches of rain and was subjected to extended power outages due to the storm. I can assure you that my client has ample information to justify and support the actions taken and to refute a few material assertions of fact set forth in your email below.

Thank you in advance for your anticipated courtesy in this regard.

I hope you fared well in the storm.

Respectfully yours,

Patrick

**Patrick J. Dougherty**  
**Attorney at Law**  
**887 Boston Neck Road, Suite #1**  
**Narragansett, RI 02882**  
**Ph: 401-789-8400**  
**Fax: 401-789-8401**  
**Mobile: 401-787-7154**  
[pjdoughertylaw@verizon.net](mailto:pjdoughertylaw@verizon.net)

-----Original Message-----

**From:** Chopy, David (DEM) <[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)>  
**To:** Patrick J. Dougherty <[pjdoughertylaw@verizon.net](mailto:pjdoughertylaw@verizon.net)>  
**Cc:** Forcier, Susan (DEM) <[susan.forcier@dem.ri.gov](mailto:susan.forcier@dem.ri.gov)>; Pinto, Stacey (DEM) <[stacey.pinto@dem.ri.gov](mailto:stacey.pinto@dem.ri.gov)>; Hogan, Patrick (DEM) <[patrick.hogan@dem.ri.gov](mailto:patrick.hogan@dem.ri.gov)>  
**Sent:** Tue, Aug 24, 2021 12:37 pm  
**Subject:** Johnson's Pond

Dear Attorney Dougherty, DEM is investigating complaints received from residents around Johnson's Pond regarding the lowering of the water level of the pond due to Tropical Storm Henri. DEM has received photographs showing boats on dry

land and props damaged. As part of DEM's investigation, we are assessing whether the lowering of the pond was necessary to maintain the safety of the dam. The facts DEM believes are correct are as follows:

## FACTS

1. On Friday, August 20, 2021 at 11:16 AM, DEM sent a notification to owners and operators of high hazard and significant hazard dams by email regarding Tropical Storm Henri. The notification advised the owners and operators of the actions DEM was requesting be taken, and it included the following statement: *As a dam owner or operator, you are responsible for maintaining the safety of the dam. It is your responsibility to monitor the pond level behind your dam. You do not need state or local government approval to temporarily release extra water from your dam prior to or during a storm if you believe it is necessary to ensure the safety of the dam. It is very important that you notify the local emergency management official or police/fire of the actions you will take so that the official is aware of potential downstream impacts and can make appropriate advisories deemed necessary. As a dam owner or operator, you are liable for damages caused by the release of water from your dam, and DEM strongly advises you to contact the local emergency management official or police/fire official prior to taking any action.*
2. On Friday, August 20, 2021, at 11:40 AM, DEM received the following response from Soccia Holdings LLC by email: *Received. Thank you.*
3. At the time the DEM notification was sent, the water level in the pond was approximately 12 inches below spillway and approximately 65 cubic feet per second (CFS) was being released through the control gates for the dam.
4. On Friday, August 20, 2021, at approximately 7:00 PM, the control gates were opened, and the water being released through the control gates increased to approximately 385 CFS.
5. On Sunday, August 22, 2021, at approximately 1:15 PM, the control gates were closed, and the water being released through the control gates decreased to approximately 40 CFS.
6. Soccia Holdings LLC did not notify local officials before opening the control gates.
7. The water level in the pond dropped by approximately 12 inches during this period.

DEM is requesting a response to the following questions:

1. What information did Soccia Holdings LLC rely on to decide that it was necessary to release extra water to ensure the safety of the dam?
2. What information did Soccia Holdings LLC rely on to decide that it was necessary to maintain the increased water release rate until 1:15 PM on Sunday, August 22 to ensure the safety of the dam?
3. Why didn't Soccia Holdings LLC notify local officials before opening the control gates?
4. How often was Soccia Holdings LLC monitoring the condition of the dam and the pond during this period and what did that monitoring consist of?

Sincerely,

**David E. Chopy, Administrator**  
**Rhode Island DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**  
**OFFICE OF COMPLIANCE & INSPECTION**  
**235 Promenade Street, Providence, Rhode Island 02908**  
**401.222.1360, NEW EXTENSION x2777400**  
[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)



STATE OF RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
BUREAU OF ENVIRONMENTAL PROTECTION  
235 Promenade Street, Suite 220  
Providence, RI 02908-5767

April 20, 2021

Edward D. Warzycha  
Operations Officer  
Town of Coventry  
1670 Flat River Road  
Coventry, RI 02816

Soscia Holdings, LLC  
c/o Douglas Soscia  
6 Silver Maple Drive  
Coventry, RI 02816

Re: Flat River Reservoir

Dear Mr. Warzycha and Mr. Soscia,

I am writing this letter as a follow up to my April 4, 2021 letter (April 4 Letter) (copy enclosed) and separate video conference calls the Department of Environmental Management (DEM) had with Soscia Holdings, LLC (through its attorney, Patrick Dougherty) and the Town of Coventry (through its officials and agents Edward Warzcha, Nicholas Gorham, David D'Agostino and Robert Fairbanks). These calls occurred on April 8, 2021 and April 12, 2021, respectively.

As a result of the calls, DEM thought it important to provide this letter to clarify several points raised during the calls.

Specifically,

- The genesis of the water levels and water releases specified in the Consent Agreement (Agreement) executed between DEM and Quidnick Reservoir Company (Quidnick) in 1995, which are also included in the current lease executed between Quidnick and the Town of Coventry (Town) in 2009, which has transferred to Soscia Holdings LLC (Soscia).
- The meaning of the term *spillway level* as used in the Agreement.
- The intention of the Agreement to balance the water levels within Flat River Reservoir and water releases from Flat River Reservoir to protect freshwater wetlands and recreational uses.
- How this balance can best be achieved during drought or dryer than normal rainfall conditions.

Genesis of Water Levels and Water Releases Specified in the Agreement

As stated in the April 4 Letter, DEM and Quidnick executed the Agreement to resolve a Notice of Violation issued by DEM to Quidnick in 1993 (NOV). The water levels and water releases described in Section 10 of the Agreement (and included in Section 7 of the current lease) were determined by DEM through a review of historical records of water levels of Flat River Reservoir (maintained by Quidnick) and stream flows of Pawtuxet River (maintained by the U. S. Geological Survey) (see opening paragraph of Section 10). These water levels and water releases were incorporated into the

lease executed between Quidnick and the Town in 1994 (1994 Lease). It took DEM and Quidnick additional time to resolve other issues in the NOV, which led to the execution of the 1994 Lease prior to the execution of the Agreement.

#### Meaning of the Term Spillway Level as Used in the Agreement

The term *spillway level* as used in the Agreement was understood by DEM and Quidnick to mean the water level at the top of the spillway of the dam, or the point at which water begins to flow over the spillway. Section 10 of the Agreement identifies a term *gatehouse spillway at the Flat River Reservoir Dam* and defines this to be *spillway level*. Quidnick had a location at the gatehouse that was used by the gatekeeper to measure the water level of Flat River Reservoir. The gatekeeper had a method of measuring that accounted for the difference in elevation at the point of measurement at the gatehouse and the top of the spillway of the dam. The language in the Agreement was intended to describe this location for and method of measurement of the water level in Flat River Reservoir.

#### Intention of the Agreement to Balance the Water Levels within Flat River Reservoir and Water Releases from Flat River Reservoir to Protect Freshwater Wetlands and Recreational Uses

It was understood by DEM and Quidnick that the Agreement was intended to balance the need to maintain sufficient water levels within Flat River Reservoir and the need to maintain sufficient water releases from Flat River Reservoir to protect freshwater wetlands and recreational uses above and below the dam.

That is why the Agreement specifies minimum water releases and water levels. For example, for April, the Agreement specifies a minimum water release from Flat River Reservoir of 100 cubic feet per second (cfs) and a minimum water level within Flat River Reservoir of 24 inches below spillway level. It also states that the water releases should be held at 215 cfs and that the water levels within Flat River Reservoir gradually be raised to 12 inches below spillway level by April 30. In years of average rainfall, maintaining water releases at 215 cfs in April should allow the Flat River Reservoir to gradually rise to 12 inches below the top of the spillway by April 30, as has been the case in recent years.

#### How This Balance Can Best Be Achieved During Drought or Drier Than Normal Rainfall Conditions

It is important to understand that the water levels and water releases described in the Agreement (and the current lease) are average values derived from DEM's review of 30+ years of historic records. DEM and Quidnick recognized that conditions of nature may preclude attaining these water levels and water releases. Accordingly, language was added to the Agreement to acknowledge that Quidnick's ability to comply was subject to conditions of nature outside the control of Quidnick, such as drought. During these conditions, the parties agreed that Quidnick's obligation to comply with the water levels and water releases would be forgiven or delayed until the conditions abated (see Section 13 of the Agreement).

It is also important to understand that the historic records used by DEM are upwards of 50 years old. Precipitation patterns are changing rapidly because of climate change, with periods of more intense droughts and more intense rainfall.

At present, Rhode Island is experiencing lower than normal rainfall for April. A similar situation occurred last summer and into fall. If these conditions continue for the remainder of April and through May, the water release rates described in the Agreement (and the current lease) may not be sufficient to allow Flat River Reservoir to rise to spillway level by May 31.

Described below are two approaches that Soscia can follow to manage the water levels within Flat River Reservoir and water releases from Flat River Reservoir during this dry period.

The first approach is to maintain the water release rate as close to 215 cfs as possible while Flat River Reservoir gradually rises to 12 inches by April 30. This is in part based on the gatekeeper's experience and observations, in that the gatekeeper needs to track the expected rainfall and be knowledgeable about how quickly the water level in the reservoir responds to changes in water releases and rainfall.

The second approach is to look at the current conditions in the region and adjust the water releases to match these conditions.

If you look at the current conditions in the region (data reported as of April 14, 2021), the average of the percent normal median flows calculated by U.S. Geological Survey (USGS) for other rivers within the area and within South County (excluding large rivers and heavily manipulated rivers) is about 70%.

River (as identified by USGS station number)	Drainage Area (in square miles)	Median Flow (in cfs)	Current Flow (in cfs)	Percent Median Normal Flow
01117000	23.0	66.0	52.0	78.7
01115630	8.0	26.0	20.8	80.0
01117800	35.0	114.0	69.3	60.7
01118000	72.0	223.0	157.0	70.4
01117500	100.0	311.0	222.0	71.4
01117468	9.0	32.0	20.3	63.4
01117420	36.0	115.0	77.5	67.3
Average	40.4	126.7	88.4	70.3

Using the water release level of 215 cfs for Flat River Reservoir for April, 70% of flow calculates out to 150 cfs [(215 cfs) x 70%=150 cfs].

That means that under the current dry conditions, the water release could be reduced from 215 cfs to 150 cfs for April. If the dry conditions continue through May, the water release could be reduced by the percent normal median flows for the rivers shown above from the specified level of 150 cfs in the Agreement (and the current lease).

Page 4

Town of Coventry and Soscia Holdings LLC

April 20, 2021

If Soscia complies with the water levels and water releases described in the Agreement (and the current lease) that have been followed for many years (and as may be occasionally adjusted to address conditions of nature beyond Soscia's control), no permit from DEM is required. If conditions of nature require adjustments more often than not, or if Soscia wishes to manage the dam in a different manner than set out in the Agreement (and the current lease) to better address current climate trends, then a permit from DEM is required to implement such changes.

Lastly, as we discussed, DEM has been monitoring the water levels in Flat River Reservoir weekly since the last week of March to determine if the water is gradually rising. Our most recent reading was taken on Monday, April 19. The water level rose 9 inches between the first and second reading, dropped 1 inch between the second and third reading and rose 7 inches between the third reading and the one taken on April 19.

I hope you find this information helpful.

Sincerely,



David E. Chopy, Administrator  
DEM Office of Compliance and Inspection

enc.: April 4, 2021 letter from DEM to the Town and Soscia

cc. Janet Coit, Director, DEM  
Terry Gray, Deputy Director, DEM  
Mary Kay, Assistant Director and Chief Legal Counsel, DEM  
Susan Forcier, Esquire, Deputy Chief Legal Counsel, DEM  
Ryan Mulcahey, Legislative Liaison/Policy Advisor, DEM  
Senator Lou Raptakis  
Senator Gordon Rogers  
Representative George Nardone  
Representative Mike Chippendale  
Representative Thomas Noret  
Representative Sherry Roberts  
Ben Marchant, Town Manager, Town of Coventry  
David D'Agostino, Esquire  
Nicholas Gorham, Esquire, Town of Coventry Solicitor  
Patrick J. Dougherty, Esquire  
Marc Lemoi, President, Johnson's Pond Civic Association