



**C. JURISDICTION AND VENUE**

3. Subject matter jurisdiction in this case is properly conferred in this Court pursuant to R.I. Gen. Laws §§ 8-2-13 and 42-17.1-2(21)(vi).
4. Personal jurisdiction over the Defendant is properly conferred in this Court based on Defendant's residency and ownership of real property within the State of Rhode Island.
5. Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 9-4-3.

**D. FACTS**

6. Defendant owns the property located at 20 Howard Avenue, Coventry, Rhode Island (the "Property").
7. The Property includes a dam identified as Pearce Pond Dam, State Identification Number 371, located approximately 400 feet northwest of the intersection of Howard Avenue and Lincoln Avenue, approximately 60 feet south of Howard Avenue, on Assessor's Plat 96, Lot 15 in the Town of Coventry, Rhode Island ("Dam 371").
8. Dam 371 is classified by RIDEM as a high hazard dam, which means that a failure or misoperation of the dam will result in a probable loss of human life.
9. On or about July 15, 2016, Dam 371 was inspected; the inspection revealed:
  - a. Overgrown vegetation on the upstream side, crest, and downstream slope, which prevented the inspector from making a complete inspection;
  - b. Deteriorated and inoperable low level outlet;
  - c. A cracked/spalled upstream wall to the left of the spillway; and
  - d. Deteriorated spillway with areas of leakage, open masonry joints, and a 2-foot diameter void with evidence of sediment transport at the left abutment contact.
10. On or about January 16, 2019, RIDEM issued a NOV to the Defendant alleging violations of the Dam Safety Regulations for:
  - a. Failing to provide a fully completed Dam Registration Form to RIDEM; and

- b. Failing to maintain a high hazard dam in a safe condition.
11. Upon information and belief, the NOV was delivered to Defendant before January 20, 2019.
12. Among other terms, the NOV ordered the Defendant to:
  - a. Within 14 days of receipt of the NOV, complete and submit to RIDEM the Dam Registration Form.
  - b. Within 90 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 (the “Dam Engineer”).
  - c. Within 90 days of receipt of the NOV, cut or remove the vegetation from the area surrounding Dam 371 in accordance with the Dam Safety Regulations, Part 1.10(A). Cutting or removal shall be in sufficient amounts to allow a thorough visual inspection to be performed. RIDEM shall be notified upon commencement and completion of this work.
  - d. Within 180 days of receipt of the NOV, the Dam Engineer must complete a visual inspection of Dam 371 and submit a report of the inspection findings to RIDEM. The report must specify the actions necessary, if any, 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 Dam Safety Regulations, Part 1.10(B).
  - e. Within 270 days of receipt of the NOV, the Dam Engineer must apply to RIDEM in accordance with the Dam Safety Regulations, Part 1.10(B) to repair the inoperable low level outlet of Dam 371. The application must include a schedule to complete the work.
  - f. The reports, applications, and/or schedules 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 deficiencies therein. **Within 14 days (unless 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.
  - g. Commence work specified in the schedule approved by RIDEM within 20 days of approval (unless expressly authorized by RIDEM in writing to commence work later) and complete such work in accordance with the approved schedule.
13. After being properly served with a copy of the NOV, the Defendant failed to request an adjudicatory hearing before the Department’s Administrative Adjudication Division

(“AAD”) within the statutorily prescribed twenty (20) day time period, as required by R.I. Gen. Laws §§ 42-17.1-2(21)(vi) and 42-17.7-9.

14. Due to Defendant’s failure to request a hearing, pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi), the NOV automatically became a Final Compliance Order enforceable in Superior Court.
15. On or about March 12, 2020, Dam 371 was inspected, which found that all of the safety violations from the previous inspection still existed and were not addressed by the Defendant.
16. On or about September 21, 2020, RIDEM received a completed Dam Registration Form from the Defendant, resolving only part of the Final Compliance Order.
17. The Property and Dam 371 continue to be owned by the Defendant.
18. As of the date of this Complaint, the Defendant has failed to fully comply with the terms of the Final Compliance Order. Such non-compliance constitutes a serious threat to public safety.

**COUNT 1**

*(Violation of Final Compliance Order)*

19. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraph 1 through 18 above.
20. The NOV issued to the Defendant by RIDEM on January 16, 2019, was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).
21. In accordance with R.I. Gen. Laws § 42-17.1-2(21)(i), the NOV issued on January 16, 2019 notified the Defendant of the facts that gave the Department reasonable grounds to believe that a violation of law had occurred; of the statutes and/or regulations violated;

and the Defendant's right to request an administrative hearing before the AAD by filing a request for hearing within twenty (20) days of service of the NOV.

22. Defendant, by failing to request a hearing within twenty (20) days of service of the NOV, is deemed to have waived his right to an adjudicatory hearing, resulting in the NOV automatically becoming a Final Compliance Order of RIDEM.
23. Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi), a Final Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Final Compliance Order rests with the Defendant.
24. As of the date of filing this Complaint, the Defendant has failed to comply with the provisions of the Final Compliance Order in that he has failed to submit to RIDEM a report from a State of Rhode Island registered professional engineer or make an application for any necessary repairs.

**WHEREFORE**, the Plaintiff, Terrence Gray, in his capacity as Director of the Rhode Island Department of Environmental Management, hereby requests that judgment be entered in favor of the Plaintiff and that the Plaintiff be granted the following relief:

1. Preliminary and Permanent Injunctive Relief, ordering the Defendant to immediately take all necessary action to bring Dam 371 into compliance with the Dam Safety Regulations, in accordance with the NOV and the Final Compliance Order, by ordering Defendant to:
  - a. **Within 90 days**, retain a professional engineer fully registered in the State of Rhode Island, who is experienced with dam inspections, design, construction and repair ("Dam Engineer").
  - b. **Within 90 days**, cut or remove the vegetation from the area surrounding Dam 371 in accordance with the Dam Safety Regulations, 250-RICR-130-05-1.10(A). Cutting or removal shall be in sufficient amounts to allow a thorough visual inspection to be performed. RIDEM shall be notified upon commencement and completion of this work.
  - c. **Within 180 days**, the Dam Engineer must complete a visual inspection of Dam 371 and submit a report of the inspection findings to RIDEM. The report

must specify the actions necessary, if any, 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 Dam Safety Regulations, 250-RICR-130-05-1.10(B).

- d. **Within 270 days**, the Dam Engineer must apply to RIDEM in accordance with the Dam Safety Regulations, 250-RICR-130-05-1.10(B) to repair the inoperable low level outlet of Dam 371. The application must include a schedule to complete the work.
  - e. The reports, applications, and/or schedules 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 deficiencies therein. **Within 14 days (unless 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.
  - f. Commence work specified in the schedule approved by RIDEM within 20 days of approval (unless expressly authorized by RIDEM in writing to commence work at later time) and complete such work in accordance with the approved schedule.
2. Any other relief that this Court deems just and equitable, in accordance with the facts of this case.

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VERIFICATION

I, Stacey Kurbiac Pinto, Environmental Engineer III of Rhode Island Department of Environmental Management's Office of Compliance and Inspection and an authorized representative of the Director, first being duly sworn upon oath, hereby state that I have reviewed the factual allegations set forth in this Complaint and Petition to Enforce and that such factual allegations are, to the best of my knowledge and belief, true and accurate.

For the Director,

By: \_\_\_\_\_

Stacey Kurbiac Pinto

Environmental Engineer III

RI Department of Environmental Management

Office of Compliance and Inspection

Dated: \_\_\_\_\_, 2023.

**STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE**

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

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Respectfully submitted,  
TERRENCE GRAY,  
in his capacity as Director,  
RHODE ISLAND DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

Date: \_\_\_\_\_, 2023

By his attorney:

/s/ Maria I. Rice  
\_\_\_\_\_  
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