

JURISDICTION & 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), as amended.
4. Personal jurisdiction over the Defendant is properly conferred in this Court based on Defendant's residence 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 and 42-17.6-4(c), as amended.

FACTS

6. The subject property is located at 82 Nautilus Street in the Town of Jamestown, Rhode Island, which is identified as Assessor's Plat 5, Lot 327 (the "Property").
7. The Property includes a residential dwelling (the "Dwelling").
8. The Defendant owns the Property, taking title on November 22, 2013.
9. The Property is located in a GA groundwater classification zone. Groundwater in this zone is considered suitable for public and private drinking water use without treatment.
10. On or about May 7, 2014 and May 15, 2014, RIDEM inspected the Property. The inspections revealed the following:
 - a. A 275 gallon above ground storage tank ("AST") that is used to hold No. 2 heating oil was present on the Property;
 - b. Oil was evident around the filter for the AST on May 7, 2014;
 - c. Oil-stained soils on the ground surface and dead grass below the AST was evident on May 7, 2014;
 - d. The AST was disconnected and placed on a tarpaulin on May 15, 2014; and
 - e. Soil contamination associated with oil was evident near the AST on May 15, 2014.
11. The Defendant did not receive approval from RIDEM to release oil on the Property.

12. On or about May 21, 2014, RIDEM issued a Notice of Responsibility (“NOR”) to the Defendant for the violations that are the subject of this Complaint. The NOR required the Defendant to take specific actions to correct the violations.

13. On or about November 17, 2014, RIDEM received a report dated November 14, 2014 that was prepared by Green Environmental, Inc. on behalf of the Defendant. The report included the following:

- a. Total volatile organic compounds of 215 parts per million (“ppm”) were detected in the soil five (5) feet below ground, adjacent to the former AST;
- b. Visual and olfactory evidence of petroleum in the soil and field screening results of the soil resulted in the transport of approximately 150 cubic yards of soil to the Central Landfill in Johnston, Rhode Island between June 18, 2014 and June 20, 2014;
- c. Laboratory analysis of a groundwater sample collected on May 16, 2014 from a monitoring well on the Property located west of the AST revealed concentrations of benzene and naphthalene of 0.014 ppm and 0.225 ppm, respectively, which exceed the GA Groundwater Quality Standards set forth in RIDEM’s *Groundwater Quality Rules* of 0.005 ppm for benzene and 0.1 ppm for naphthalene;
- d. Laboratory analysis of soil samples collected on the Property that revealed the following concentrations of total petroleum hydrocarbons (“TPH”):
 - i. On May 6, 2014, 1,600 ppm east of the AST;
 - ii. On May 28, 2014, 10,300 ppm and 3,990 ppm below the AST along the foundation;
 - iii. On May 29, 2014, 537 ppm along the west side of the excavation sidewall; and
 - iv. On June 3, 2014, 677 ppm in the basement of the Dwelling adjacent to the sump.
- e. Laboratory analysis of a water sample collected on June 30, 2014 from the private drinking water well installed on the Property revealed a concentration of TPH at 0.59 ppm; and

- f. The sampling completed as of that date indicated that oil-contaminated soil remained in place beneath the Dwelling and along the western foundation wall of the Dwelling.
14. The full nature and extent of the oil release has yet to be determined.
15. The Defendant failed to fully investigate and remediate the oil release in accordance with RIDEM's OPC Regulations § 2.12(E) (formerly § 12(e)).
16. On or about April 5, 2017, RIDEM issued the NOV in accordance with R.I. Gen. Laws § 42-17.1-2(21) for failure to comply with:
 - a. R.I. Gen Laws § 46-12-5(a), which prohibits the placement of any pollutant in a location where it is likely to enter the waters of the State.
 - b. R.I. Gen Laws § 46-12.5.1-3(a), which prohibits the discharge of oil into or upon the waters of the State.
 - c. RIDEM's *Water Quality Regulations*, Rule 11(E) (currently § 1.13(E)), which prohibits the discharge of oil into the waters of the State.
 - d. RIDEM's *Groundwater Quality Rules*, Rule 8.2 (currently § 3.8(B)), which prohibits the discharge of any pollutant into groundwater without approval from RIDEM.
 - e. RIDEM's OPC Regulations, § 6(a) (currently § 2.6(A)), which prohibits placement of oil into the waters or land of the State.
 - f. RIDEM's OPC Regulations, § 12(e) (currently § 2.12(E)), which requires all actions necessary to remediate a release of oil as determined by RIDEM.
17. The NOV ordered the Defendant to:
 - a. Within seven (7) days of receipt of the NOV, procure the services of a qualified environmental consultant to prepare a status report (the "Report") and a remedial action plan (the "Plan") for the Property in accordance with OPC Regulations § 12(e) (currently § 2.12(E)). The Plan must include a schedule to complete all proposed work.
 - b. Within sixty (60) days of receipt of the NOV, submit the Report and Plan to RIDEM.
 - c. The Report and Plan shall be subject to RIDEM's review and approval. Upon review, RIDEM shall provide written notification to the Defendant either

granting formal approval or stating deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies in the Report or Plan, Defendant must submit to RIDEM a modified proposal or additional information necessary to correct the deficiencies.

18. Pursuant to R.I. Gen. Laws § 42-17.6-2, the NOV assessed an administrative penalty of Two Thousand Five Hundred Dollars (\$2,500.00).

19. The Defendant timely requested an administrative hearing before RIDEM's Administrative Adjudication Division ("AAD") to contest the NOV.

20. On March 28, 2018, after Defendant failed to appear to two prehearing conferences, the AAD issue an Order of Conditional Default giving the Defendant until April 6, 2018 to file a statement demonstrating good cause why a Final Judgment of Default/Dismissal should not be entered.

21. On April 4, 2018, the Defendant filed a response advising why he had failed to attend.

22. On April 16, 2018 and July 19, 2018, the AAD issued orders scheduling prehearing conferences on May 17, 2018 and September 27, 2018, respectively, indicating that the Conditional Default would be held in abeyance subject to the Defendant's continued attendance when scheduled.

23. On September 27, 2018, the Defendant failed to appear at the scheduled Prehearing Conference or advise the AAD of the reason for his nonappearance.

24. On October 2, 2018, RIDEM filed a Motion for Entry of Final Judgment.

25. On October 22, 2018, AAD issued a Final Order of Default dismissing the Defendant's administrative appeal and deeming the Defendant to have waived his right to an adjudicatory hearing.

26. Because the Defendant waived his right to an adjudicatory hearing, the NOV and associated administrative penalty contained within automatically became a Compliance Order enforceable in Superior Court pursuant to R.I. Gen. Laws §§ 42-17.1-2(21)(vi) and 42-17.6-4(c) wherein the burden of proving error in the Compliance Order rests with the Defendant.

27. Heating oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens.

28. The Defendant's failure to comply with the NOV represents continuing violations of RIDEM's regulations.

29. As of the date of the filing of this Complaint, the Defendant has failed to perform the actions required by the Compliance Order or NOV.

COUNT 1
(Violation of a Compliance Order)

30. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 29 above.

31. The NOV was properly issued to the Defendant on or about April 5, 2017 in accordance with R.I. Gen. Laws § 42-17.1-2(21).

32. The NOV was properly served in accordance with R.I. Gen. Laws § 42-17.1-2(21)(i).

33. In accordance with R.I. Gen. Laws § 42-17.1-2(21)(i), the NOV notified the Defendant of the facts that gave RIDEM reasonable grounds to believe that a violation of law had occurred; of the statutes and/or regulation(s) violated; and of the Defendant's right to request an administrative hearing before RIDEM's Administrative Adjudication Division by filing a request for hearing with twenty (20) days of service of the NOV.

34. Defendant timely requested a hearing, but was found by AAD to be in default and was deemed to have waived his right to an adjudicatory hearing.

35. Pursuant to R.I. Gen. Laws § 42-17.6-4(c), with the Defendant having been deemed to have waived his right to an adjudicatory hearing, the NOV automatically became a Compliance Order of the RIDEM.

36. Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi), a Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Compliance Order rests with the Defendant.

37. As of the date of filing this Complaint, the Defendant has failed to comply with the provisions of the Compliance Order.

COUNT 2

(Violation of a Compliance Order - Administrative Penalty)

38. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 37 above.

39. The NOV was properly issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

40. The NOV was properly served in accordance with R.I. Gen. Laws § 42-17.1-2(21)(i).

41. The administrative penalty in the NOV was assessed pursuant to R.I. Gen. Laws § 42-17.6-3.

42. In accordance with R.I. Gen. Laws § 42-17.6-3(a), the NOV notified the Defendant of the facts giving rise to the alleged violations; of the statutes and/or regulations violated; the amount of the assessed administrative penalty for each violation; of the Defendant's right to request an administrative hearing before the RIDEM's Administrative Adjudication Division by filing a request for hearing within twenty (20) days of service of the NOV and

that the failure to request a hearing in the time prescribed would result in the associated administrative penalty proposed becoming final.

43. Defendant timely requested a hearing, but was found by AAD to be in default and was deemed to have waived his right to an adjudicatory hearing.

44. Pursuant to R.I. Gen. Laws § 42-17.6-4(c), with the Defendant having been deemed to have waived his right to an adjudicatory hearing, the NOV automatically became a Compliance Order of the RIDEM and the proposed administrative penalty became final.

45. Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi), a Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Compliance Order rests with the Defendant.

46. Pursuant to R.I. Gen. Laws § 42-17.6-4(c), if a person waives their right to a hearing on an administrative penalty, it is enforceable in the Superior Court through injunctive proceedings.

47. Defendant has failed to pay the administrative penalty assessed in the NOV.

Relief Requested

WHEREFORE, the Plaintiff, Terrence Gray, in his capacity as Director of the Department of Environmental Management hereby requests that this honorable Court enter Judgment in favor of the Plaintiff and that the Plaintiff be granted the following relief to achieve compliance with the terms of the NOV:

1. Temporary, Preliminary, and Permanent Injunctive Relief, ordering Defendant to:
 - a. Within seven (7) days, procure the services of a qualified environmental consultant to prepare a status report (the “Report”) and a remedial action plan (the “Plan”) for the Property in accordance with OPC Regulations § 2.12(E) (formerly § 12(e)). The Plan must include a schedule to complete all proposed work.

- b. Within sixty (60) days, submit the Report and Plan to RIDEM.
 - c. The Report and Plan shall be subject to RIDEM’s review and approval. Upon review, RIDEM shall provide written notification to the Defendant either granting formal approval or stating deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies in the Report or Plan, Defendant must submit to RIDEM a modified proposal or additional information necessary to correct the deficiencies.
2. Award of Administrative Penalty, ordering Defendant to pay the full amount of Two Thousand Five Hundred Dollars (\$2,500) to the Plaintiff, which is the amount of the administrative penalty assessed in the NOV; and
 3. Such further relief as this Court deems just and equitable in accordance with the facts of this case.

VERIFICATION

I, Tracey Tyrrell, Supervising Environmental Scientist 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 the facts contained in this Complaint to the best of my knowledge and belief, true and accurate.

For the Director,

By: _____
 Tracey D’Amadio Tyrrell
 Supervising Environmental Scientist
 Office of Compliance and Inspection
 Dated: _____

**STATE OF RHODE ISLAND
 COUNTY OF PROVIDENCE**

Subscribed and sworn to before me this ____ day of _____, 2024.

 NOTARY PUBLIC
 My commission expires: _____

Submitted by:
 Terrence Gray, in his capacity as Director,
 RHODE ISLAND DEPARTMENT OF
 ENVIRONMENTAL MANAGEMENT

By his attorney,

/s/ Maria I. Rice

Maria I. Rice, Esq. (#10153)

RIDEM Office of Legal Services

235 Promenade Street, Fourth Floor

Providence, RI 02908

(401) 537-4189

maria.rice@dem.ri.gov