

to R.I. Gen. Laws §§ 8-2-13 and 42-17.1-2(21)(v).

5. Personal jurisdiction over the Defendant in this case is properly conferred in this Court based on Defendants' presence within the State of Rhode Island.

6. Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 9-4-3.

D. FACTS

7. The subject property (the "Property") is located at 1260 Wallum Lake Road in the Town of Burrillville, Rhode Island and is also identified by the Town of Burrillville as Assessor Plat 119, Lot 11.

8. The Property includes a dwelling assessed by the Town of Burrillville as single family residence with two bedrooms and one bathroom.

9. The Defendant, Elizabeth A. Dibiasio, owns the Property.

10. On July 24, 2012, the Department issued a NOV alleging violations of the OWTS Regulations for, discharge of sewage to the surface of the ground, and requiring the submittal of a repair application for a failed OWTS.

11. The Defendants did not request an administrative hearing to contest the NOV.

12. Among other terms, the Notice of Violation required the Defendant to:

- (a) Immediately take steps to reduce the discharge of sewage from the Dwelling, such as through the installation and use of water conservation devices and fixtures, and arrange to have the OWTS pumped by a permitted septage transporter as frequently as necessary to prevent the OWTS from overflowing or breaking out onto the surface of the ground.
- (b) Within thirty (30) days of receipt of the NOV, submit a written proposal for a permanent solution to the violation that must include an inspection of the OWTS by a licensed OWTS designer to determine the cause of the failure. If determined that the OWTS needs repair and public sewers will not be available for connection with one year, a formal application and plan must be submitted to the DEM in accordance with DEM's OWTS Regulations;

- (c) Commence work on the project in accordance with the method approved by the Director within twenty (20) days of approval.
- (d) Pay an administrative penalty of one thousand (\$1,000.00) dollars.

13. To date, the Defendant have failed to comply with the NOV in that there continues to be evidence of sewage being discharged to the surface of the ground, no written proposal for a permanent solution has been submitted, no formal application and plan to repair the OWTS has been submitted to RIDEM and the administrative penalty of one thousand (\$1,000.00) dollars has not been paid.

14. Because the Defendants failed to request an administrative hearing, the NOV and associated administrative penalties contained within (pursuant to *R.I. Gen. Laws* §§ 42-17.1.2(21)(v) and 42-17.6-4(b)) automatically became a Final Compliance Order enforceable in Superior Court.

15. The Property continues to be owned by the Defendant.

16. Since the issuance of the NOV the Department has received complaint regarding the property and ongoing discharge and an inspection by the Department on January 21, 2015 shows evidence of overflows.

17. As of the date of this Complaint, the Defendant have failed to fully comply with the terms of the Final Compliance Order. Such non-compliance constitutes a serious environmental and public health hazard to the Defendants, their neighbors, and the general public.

COUNT I
(Violation of a Final Compliance Order)

18. Plaintiff hereby restates and incorporates by reference the allegations contained in

Paragraphs 1 through 17 above.

19. The NOV issued to the Defendant by RIDEM on July 24, 2012 was issued pursuant to *R.I. Gen. Laws* § 42-17.1-2(21).

20. In accordance with *R.I. Gen. Laws* § 42-17.1-2(21)(i), the NOV issued on July 24, 2012 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 regulation(s) violated; and of the Defendant's right to request an administrative hearing before the Department's Administrative Adjudication Division by filing a request for hearing with twenty (20) days of service of the NOV.

21. Defendant, by failing to appeal the issuance of the NOV, is deemed to have waived his right to an adjudicatory hearing resulting in the NOV automatically transforming in to a Final Compliance Order of the Department.

22. 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 Defendants.

23. 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 have the OWTS pumped as necessary to prevent sewage from the OWTS from overflowing onto the surface of the ground; the Defendant has failed to submit to RIDEM a formal application and plan to repair the OWTS and have not repaired the OWTS nor paid the administrative penalty.

WHEREFORE, Plaintiff, Janet L. Coit, in her capacity as Director of the Rhode Island Department of Environmental Management, hereby requests that Judgment be entered in favor of the Plaintiff and that Plaintiff be granted the following relief:

- (a) Preliminary and Permanent Injunctive Relief, ordering Defendant to immediately pump the OWTS as to prevent any and all sanitary sewage from overflowing on the Property and cease any and all use of laundry washing machines until the OWTS is fully repaired as evidenced by the issuance of a Certificate of Conformance by the DEM to the Defendant;
- (b) Permanent Injunctive Relief, ordering Defendants to submit to the Department within thirty (30) days a written proposal for a permanent solution to OWTS, that must include an inspection of the OWTS by a licensed OWTS designer to determine the cause of the failure (the “System Assessment”):
1. Said System Assessment must be signed by the licensed designer who inspected the OWTS, it must identify the size and location of the OWTS components, it must set forth the probable cause(s) for the failure, and propose a plan, including a proposed timetable, for any repair work or the correction of the failure. If it is determined that the OWTS needs repair a formal application and plan must be submitted to the DEM in accordance with the DEM’s OWTS Regulations;
 2. The formal application and plan (the “Application”) shall be subject to the DEM’s review and approval. Upon review, the DEM shall provide written notification to the Defendant either granting formal approval or stating the deficiencies therein. Within 14 days of receiving a notification of deficiencies in the Application, the Defendant must submit to DEM a modified proposal or additional information necessary to correct the deficiencies;
 3. Once the Application is approved, the Defendant shall commence work on the project in accordance with the method approved by the DEM within 20 days of approval and complete such work within 120 days of said approval.
- (c) Permanent Injunctive Relief, if the Defendant fails to abide by the terms of paragraph (b) and its subsections, as stated immediately above, including following the time requirements, then the Defendant is to ensure that the Property is vacant within thirty (30) days of Defendant’s failure to abide by the above stated timeline and to keep the Property vacant until such time that the Property can either be: (1) connected to the Town of Burrillville sewerage system; or (2) repair or install an OWTS to the satisfaction of RIDEM as evidenced by the issuance of a Certificate of Conformance; and
- (d) Award of Administrative Penalty, ordering Defendant to pay the full amount of One Thousand (\$1,000.00) Dollars to the Plaintiff which is the amount of the administrative penalty assessed in the NOV of July 24, 2012; and
- (e) Such further relief as this Court deems just and equitable in accordance with the facts of this case.

VERIFICATION

I, Patrick J. Hogan, P.E., Principal Sanitary Engineer for the 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 and the exhibits attached hereto are, to the best of my knowledge and belief, true and accurate.

For the Director,

PATRICK J. HOGAN, P.E.
Principal Sanitary Engineer
Office of Compliance and Inspection
Dated: October ____, 2015.

STATE OF RHODE ISLAND
PROVIDENCE COUNTY

Subscribed and sworn to before me this ____ day of October, 2015.

NOTARY PUBLIC
My commission expires:

Submitted by:
JANET L. COIT,
in her capacity as Director,
RHODE ISLAND DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By her attorney,

/s/Tricia Quest
Tricia Quest., Esq. (#7362)
RIDEM Office of Legal Services
235 Promenade Street, Fourth Floor
Providence, RI 02908
(401) 222-6607
(401) 222-3378 (facsimile)
tricia.quest@dem.ri.gov