

Knighthawk, Irvine California, 92604.

C. JURISDICTION AND VENUE

4. Subject matter jurisdiction in this case is properly conferred in this Court pursuant to R.I. Gen. Laws §§ 8-2-13 and 42-17-2(21)(vi).
5. Personal Jurisdiction over the Defendants, in this case, is properly conferred in this Court based on Defendants ownership of real property 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. Defendants own property located at 43 Stony Acre Drive, Cranston, Rhode Island 02920 (the "Property").
8. The Property includes a dam identified as Stone Pond Dam, State Identification Number 320, located approximately 2,400 feet south west of the intersection of Atwood Avenue and Plainfield Pike, approximately 220 feet south of Plainfield Pike, Assessor's Plat 37, Lot 6 in the City of Cranston, Rhode Island ("Dam 320").
9. Stone Pond Dam is classified by RIDEM as a High Hazard Dam.
10. The Defendants, Richard A. Fenner and Kathleen M. Fenner, are responsible for and own the dam to the right of the primary spillway, which includes the auxiliary spillway near the right abutment, of Dam 320.
11. On October 2, 2013, and April 22, 2015, Dam 320 was inspected; inspections revealed:
 - a. Large trees (fallen) and brush at the entrance to the auxiliary spillway that inhibits flow;
 - b. Severe seepage and potential sediment transport below the auxiliary spillway (the "Seepage");
 - c. Partially collapsed stone masonry wall on the downstream side of the embankment ("Collapsed Wall"); and

- d. Sliding and/or sloughing of the downstream side of the embankment (“Sliding/Sloughing”).
12. On August 2, 2016, RIDEM issued a NOV to the Defendants alleging violations of the Dam Safety Regulations for:
 - a. Failing to maintain a high hazard dam in a safe condition; and
 - b. For requiring an owner of a high hazard dam to perform detailed investigation of the dam whenever the findings of a visual inspection reveal that the dam may be unsafe.
13. The Defendants requested an administrative hearing to resolve the violations.
14. On July 25, 2017, Defendants failed to appear for their administrative hearing.
15. On July 27, 2017, RIDEM filed a Motion for Entry of Final Judgement.
16. On August 21, 2017, the Administrative Hearing Officer entered a Final Order of Default, dismissing the Defendants appeal and ordered that the August 2, 2016, NOV was final and became a compliance order against the Defendants.
17. Among other terms, the NOV ordered the Defendants to:
 - a. Within 90 days of receipt of the NOV, cut and remove the large trees and brush from the entrance to the auxiliary spillway to allow for the free passage of water over the spillway. The RIDEM shall be notified upon commencement and completion of this work.
 - 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 180 days of receipt of the NOV, the Dam Engineer must complete the following in accordance with the Dam Safety Regulations, Rule 11C:
 - i. A detailed investigation of Dam 320 to assess the Seepage, Collapsed Wall, and Sliding/Sloughing; and
 - ii. Submit a report of the investigation finding to the RIDEM. The report must specify the actions (in addition to the action ordered in the NOV) 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 Dam Safety Regulations, Rule 10B.

- d. The report, application, and/or schedule required above shall be subject to the RIDEM's review and approval. Upon review, the RIDEM shall provide written notification to the Respondent either granting formal approval or stating the deficiencies therein. **Within 14 Days (unless a longer time is specified) of receiving a notification of deficiencies**, the Respondent shall submit to the RIDEM a modified report, application, and/or schedule or additional information necessary to correct deficiencies.
- e. Commence work specified in the schedule approved by the RIDEM within 20 days of approval (unless otherwise expressly authorized by the RIDEM in writing to commence work at a later time) and complete such work in accordance with the approved schedule.

18. To date, the Defendants have failed to comply with the NOV.

19. Due to Defendants failure to appear and an Order of Default ordered by AAD, the NOV, pursuant to R.I. Gen. Laws §§ 42-17.1-2(21)(vi) and 42-17.6-4(b), automatically became a Final Compliance Order enforceable in Superior Court.

20. The Property and Dam 320 continues to be owned by the Defendants.

21. As of the date of this Complaint, the Defendants have 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)

22. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraph 1 through 21 above.

23. The NOV issued to the Defendants by the RIDEM on August 2, 2016, was issued pursuant to R.I. Gen. Laws §§ 42-17.1-2(21) and 42-17.6-3.

24. In accordance with R.I. Gen. Laws § 42-17.1-2(21)(i), the NOV issued on August 2,

2016, notified the Defendants 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 Defendants' right to request an administrative hearing before the Department's Administrative Adjudicatory Division by filing a request for hearing within twenty (20) days of service of the NOV.

25. Defendants, by failing to appear for their Administrative Hearing, are deemed to have waived their rights to an adjudicatory hearing resulting in the NOV automatically transforming into a Final Compliance Order of the RIDEM.
26. 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.
27. As of the date of filing this Complaint, the Defendants have failed to comply with the provisions of the Final Compliance Order in that they have failed to submit to the RIDEM a report from a State of Rhode Island registered professional engineer or make an application for any necessary repairs.

WHEREFORE, the Plaintiff, Janet L. Coit, in her capacity as Director of the Rhode Island Department of Environmental Management, hereby requests that Judgement 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 320 into compliance with the Dam Safety Regulations, in accordance with the NOV and the Final Compliance Order, by ordering Defendants to:
 - a. **Within 90 days**, to cut and remove the large trees and brush from the entrance to the auxiliary spillway to allow for the free passage of water over the spillway. The RIDEM shall be notified upon commencement and completion of this work.

- b. **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 (“the Dam Engineer”).
 - c. **Within 180 days**, the Dam Engineer must complete the following in accordance with the Dam Safety Regulations, 250-RICR-130-05-1.11(C):
 - i. A detailed investigation of Dam 320 to assess the Seepage, Collapsed Wall, and Sliding/Sloughing; and
 - ii. Submit a report of the investigation finding to the RIDEM. The report must specify the actions (in addition to the action ordered in the NOV) 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 Dam Safety Regulations, 250-RICR-130-05-1.10(B).
 - d. The report, application, and/or schedule required above shall be subject to the RIDEM’s review and approval. Upon review, the RIDEM shall provide written notification to the Respondent either granting formal approval or stating the deficiencies therein. **Within 14 Days (unless a longer time is specified) of receiving a notification of deficiencies**, the Respondent shall submit to the RIDEM a modified report, application, and/or schedule or additional information necessary to correct deficiencies.
 - e. Commence work specified in the schedule approved by the RIDEM within 20 days of approval (unless otherwise expressly authorized by the RIDEM in writing to commence work at a 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.

VERIFICATION

I, Paul W. Guglielmino, Principal Civil Engineer 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: _____
PAUL W. GUGLIELMINO
Principal Civil Engineer
Office of Compliance and Inspection
Dated: January ____, 2019.

**STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE**

Subscribed and sworn to before me this ____ day of January, 2019.

NOTARY PUBLIC
My Commission Expires:

Respectfully submitted,
JANET L. COIT,
in her capacity as Director,
RHODE ISLAND DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Date: January ____, 2019

By her attorney:

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