

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

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

Plaintiff,

vs.

GALLIANO D. DiCOSTANZO

Defendant

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C.A. No. PC 17-_____

**VERIFIED COMPLAINT AND
PETITION TO ENFORCE A FINAL COMPLIANCE ORDER**

A. INTRODUCTION

1. This matter arises as a result of Defendant’s violations of the *RULES ESTABLISHING MINIMUM STANDARDS RELATING TO LOCATION, DESIGN, CONSTRUCTION AND MAINTENANCE OF ONSITE WASTEWATER TREATMENT SYSTEMS, as amended*, (the “OWTS Regulations”) and Defendant’s failure to appeal a Notice of Violation (“NOV”) issued by the Rhode Island Department of Environmental Management (“RIDEM” or the “Department”). The NOV relates to the failure of an onsite wastewater treatment system (“OWTS”) at the subject property.

B. PARTIES

2. Plaintiff, Janet L. Coit, is the duly appointed Director of the RIDEM, whose offices are located at 235 Promenade Street, Providence, Rhode Island.

3. Defendant, Galliano D. DiCostanzo, is a resident of Rhode Island with an address of 123 Longmeadow Avenue, in the City of Warwick Rhode Island.

C. JURISDICTION & VENUE

4. Subject matter jurisdiction in this case is properly conferred in the Court pursuant to R.I. Gen. Laws §§ 8-2-13 and 42-17.1-2(21)(vi).

5. Personal jurisdiction over the Defendant in this case is properly conferred in this Court based on Defendant's presence and 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. The subject property (the "Property") is located at 145 Longmeadow Avenue in the City of Warwick, Rhode Island, and is also identified by the City of Warwick as Assessor's Plat 335, Lot 441.

8. The Property includes a dwelling which is a multiple unit building (the "Dwelling").

9. The Defendant, Galliano D. DiCostanzo owns the Property.

10. On January 23, 2017, the RIDEM issued a NOV alleging violations of the OWTS Regulations for the discharge of wastewater to any open or covered drain tributary to a watercourse, the discharge of sewage to the surface of the ground from the OWTS, and requiring submittal of a repair application for a failed OWTS.

11. The NOV was delivered to the Defendant at his residence on or about January 26, 2017 as evidenced by the green return of service card from the United States Postal Service.

12. The Defendant did not request an administrative hearing to contest the NOV.

13. Among other terms, the NOV ordered the Defendant to:

- a. Immediately take steps to reduce the discharge of sewage to the OWTS, 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. Immediately cease use of any/all laundry washing machine/s located on the Property. No laundry use is allowed until the OWTS is fully repaired.
- c. 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 (the "System Assessment"). The System Assessment must be signed by the licensed designer who inspected the OWTS, must identify the size and location of the OWTS components, must set forth the probable cause(s) for the failure, and propose a plan, including a proposed timetable, for any repair work for the correction of the failure. If it is determined that the OWTS needs repair and public sewers will not be available for connection within 1 year, a formal application and plan must be submitted to the RIDEM in accordance with the OWTS Regulations (the "Application").
- d. The Application shall be subject to RIDEM's review and approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies in the Application, submit to the RIDEM a modified proposal or additional information necessary to correct the deficiencies.
- e. Commence work on the project in accordance with the method approved by the RIDEM within 20 days of approval and complete such work within 120 days of said approval or other date specified by the RIDEM.
- f. Pay an administrative penalty of Three Thousand Four Hundred (\$3,400.00) Dollars.

14. To date, the Defendant has failed to comply with the NOV in that no written proposal for a permanent solution has been submitted to the RIDEM, no formal application and plan to repair the OWTS has been submitted to the RIDEM and the administrative penalty of Three Thousand Four Hundred (\$3,400.00) Dollars has not been paid.

15. Because the Defendant failed to request an administrative hearing, the NOV and

associated administrative penalty contained within (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.

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

17. 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 environmental and public health hazard to the Defendants, their neighbors, and the general public.

18. As of the date of this Complaint, the RIDEM continues to receive complaints that the Defendant's OWTS continues to be failing and sewage is overflowing and flowing into a nearby storm drain.

COUNT I

(Violation of a Final Compliance Order)

19. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 18 above.

20. The NOV issued to the Defendant by the RIDEM on January 23, 2017 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 23, 2017 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.

22. 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 into a Final Compliance Order of the 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 the RIDEM a formal application and plan to repair the OWTS nor paid the administrative penalty.

COUNT II

(Violation of a Final Compliance Order Administrative Penalties)

25. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 24 above.

26. The NOV issued to the Defendant on January 23, 2017 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

27. The administrative penalty assessed in the NOV issued to the Defendant on January 23, 2017 was assessed pursuant to R.I. Gen. Laws § 42-17.6-3.

28. In accordance with R.I. Gen. Laws § 42-17.6-3(a) the aforementioned 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 Adjudicatory Division by filing a request for hearing within twenty (20) days of service of the NOV and that

his failure to request a hearing in the time prescribed would result in the associated administrative penalty proposed becoming final; and the manner of payment thereof.

29. Pursuant to R.I. Gen. Laws § 42-17.6-4(b) and § 42-17.1-2(21)(i) Defendant, by failing to appeal the issuance of the NOV and the proposed administrative penalty, is deemed to have waived his rights to an adjudicatory hearing resulting in the NOV automatically transforming into a Final Compliance Order of the RIDEM and the proposed administrative penalty becomes final.

30. 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.

31. Defendant has failed to pay the administrative penalty assessed in the January 23, 2017 NOV.

32. Each day of non-compliance represents a continuing violation of the OWTS Regulations and constitute a separate offense subject to separate administrative penalties.

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 the Plaintiff be granted the following relief.

- (a) Preliminary and Permanent Injunctive Relief, ordering Defendant to have the OWTS pumped by a permitted septage transporter as often as necessary to prevent any and all sanitary sewage from overflowing on the Property and cease any and all use of laundry washing machine(s) at the Dwelling until the OWTS is fully repaired as evidenced by the issuance of a Certificate of Conformance by the RIDEM to the Defendant or the RIDEM determines that the OWTS can function properly without repair;
- (b) Permanent Injunctive Relief, ordering Defendant to submit to the RIDEM within thirty (30) days a written proposal for a permanent solution to the OWTS failure, 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, must identify the size and location of the OWTS components, must set forth the probable cause(s) for the failure, and propose a plan, including a proposed timetable for any repair work to correct the failure. If it is determined that the OWTS needs repair and public sewers will not be available for connection within 1 year, a formal application and plan must be submitted to the RIDEM in accordance with the OWTS Regulations;
 2. The formal application and plan (the “Application”) shall be subject to the RIDEM’s review and approval. Upon review, the RIDEM 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 the RIDEM 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 RIDEM 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 paragraphs (a) and (b) and its subsections, as stated immediately above, including following the time requirements, then the Defendant is to ensure that the Dwelling is vacant within thirty (30) days of Defendant’s failure to abide by the above stated timeline and to keep the Dwelling vacant until such time that either: (1) the Dwelling is connected to the City of Warwick sewerage system; or (2) the OWTS is repaired to the satisfaction of the 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 Three Thousand Four Hundred (\$3,400.00) Dollars to the Plaintiff which is the amount of the administrative penalty assessed in the NOV of January 23, 2017; and
- (e) Such further relief as this Court deems just and equitable in accordance with the facts of this case.

VERIFICATION

I, Stephen 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: _____
STEPHEN TYRRELL
Supervising Environmental Scientist
Office of Compliance and Inspection
Dated: May __, 2017.

**STATE OF RHODE ISLAND
PROVIDENCE COUNTY**

Subscribed and sworn to before me this ____ day of May, 2017.

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 _____
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