



3. Subject matter jurisdiction in this case is properly conferred in the Court pursuant to R.I. Gen. Laws § 8-2-13 and 42-17-2(21)(vi).
4. Personal Jurisdiction over the Defendant in this case is properly conferred in this Court based on Defendant's presence and ownership of real property with 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. The subject property is located at 20 West Allenton Road, in the Town of North Kingstown Rhode Island, and is identified by the Town of North Kingstown as Assessor's Plat 73, Lot 32 (the "Property").
7. The Property includes a multi-family dwelling home with 8 bedrooms and 4 bathrooms.
8. The Defendant, James P. Tiernan, is the owner of the Property.
9. On June 28, 2017, RIDEM inspected the Property. The inspection revealed that the OWTS at the property had failed and sewage was discharged from the OWTS to the surface of the ground as evidenced by:
  - a. Observation of fluids, blackish soil and lush vegetation on the surface of the ground in the area around the OWTS;
  - b. Odors associated with sewage in the area around that OWTS; and
  - c. Photographs showing the fluid, blackish soil and lush green vegetation on the surface of the ground in the area around that OWTS.
10. On February 26, 2018, RIDEM issued a NOV alleging violations of the OWTS Regulations for the discharge of sewage to the surface of the ground and requiring submittal of a repair application for a failed OWTS, in accordance with OWTS

Regulations Rule 8 and 17.7.

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

12. 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 launder use is allowed until the OWTS is fully repaired.
- c. Within 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 DEM in accordance with the DEM’s OWTS Regulations (the “Application”).
- d. The Application shall be subject to the DEM’s review and approval. Upon review, the DEM shall provide written notification to you either granting formal approval or stating the deficiencies therein. Within (14) days (unless a longer time is specified) or receiving a notification of deficiencies in the Application, you must submit to the DEM 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 DEM within 20 days of approval (unless otherwise expressly authorized by the DEM in writing to commence work later), and complete such work within 120 days of said approval or other date specified by the DEM.
- f. Pay an administrative penalty of Two-Thousand Two-Hundred (\$2,200) Dollars.

13. To date, the Defendant has failed to comply with the NOV in that no formal application and plan to repair the OWTS has been submitted to the RIDEM and the Administrative penalty of Two-Thousand Two-Hundred (\$2,200) Dollars has not been paid.

14. Because the Defendant failed to request an administrative hearing, the NOV and associated administrative penalty contained with (pursuant to R.I. Gen. Laws §§ 42-17.1-2(21)(vi) and 42-17.6-4(b)) automatically become a Final Compliance Order enforceable in Superior Court.
15. The Property continues to be owned by the Defendant.
16. 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 Defendant, his tenants, his neighbors, and the general public.

### **COUNT 1**

#### *(Violation of Final Compliance Order)*

17. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraph 1 through 16 above.
18. The NOV issued to the Defendant by the RIDEM on February 26, 2018, was issued pursuant to R.I. Gen. Laws §§ 42-17.1-2(21) and 42-17.6-3.
19. In accordance with R.I. Gen. Laws § 42-17.1-2(21)(i), the NOV issued on February 26, 2018, 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 Department's Administrative Adjudicatory Division by filing a request for hearing with twenty (20) days of service of the NOV.
20. Defendant, by failing to appeal the issuance of the NOV, 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.

21. 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.
22. 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 2**

*(Violation of Final Compliance Order Administrative Penalties)*

23. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 22 above.
24. The NOV issued to the Defendant on February 26, 2018, was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).
25. The administrative penalties assessed in the NOV issued to the Defendant on February 26, 2018, were assessed pursuant to R.I. Gen. Laws § 42-17.6-3.
26. 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 RIDEM's Administrative Adjudicatory Division by filing a request for hearing within twenty (20) days of service of the NOV and that Defendants 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.

27. 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 in to a Final Compliance Order of the RIDEM and the proposed administrative penalty became final.
28. 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.
29. Defendant has failed to pay the administrative penalties assessed in the February 26, 2018, NOV.
30. Each day of non-compliance represents a continuing violation of the OWTS Regulations and constitute a separate offense subject to separate administrative penalties.

**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:

- (a) Preliminary and Permanent Injunctive Relief, ordering the Defendant to have the OWTS pumped by a permitted septage transporter as often as necessary to prevent all sanitary sewage from overflowing on the Property and cease 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 designed 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 one (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 fourteen (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 twenty (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 North Kingstown 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 the Defendant to pay the full amount of Two-Thousand Two-Hundred (\$2,200) Dollars to the Plaintiff which is the amount of administrative penalty assessed in the NOV of February 26, 2018; and
- (e) Such further relief as this Court deems just and equitable in accordance with the facts of this case.

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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: June \_\_\_\_, 2018.

**STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE**

Subscribed and sworn to before me this \_\_\_\_ day of June, 2018.

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

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

By her attorney:

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