



**C. JURISDICTION AND VENUE**

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 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. Defendant owns a dam identified as Wilbur Pond Dam, State Identification Number 572, located approximately 4,500 feet north of the intersection of George Washington Trail and Putnam Pike, approximately 2,000 linear feet west of George Washington Trail, Assessor's Plat 259, Lot 1, in the town of Burrillville, Rhode Island ("Dam 572").
7. Dam 572 is classified as High Hazard.
8. Defendant, Tillinghast Holding Co. LLC, owns Dam 572.
9. On October 9, 2013, and April 26, 2015, Dam 572 was inspected. The inspections revealed:
  - a. Seepage of 10-gallons per minute at the toe of the retaining structure at the primary spillway outlet with an accumulation of fine to course sand at the seepage areas;
  - b. Vegetation on the downstream side of the embankment that did not allow a proper inspection to be performed;
  - c. Many loose or missing stones on the downstream headwall of the primary spillway; and
  - d. The owner refraining from the operation of the valve for the low-level outlet because of concerns about the deterioration of the culvert pipe.
10. On May 24, 2016, RIDEM issued a NOV to the Defendant alleging violations of Dam Safety Regulations for:

- a. Requiring the owner of a high hazard dam to maintain the dam in a safe condition; and
- b. Requiring the owner of a high hazard dam to perform a detailed investigation of the dam whenever the findings of a visual inspection reveal that the dam may be unsafe.

**11.** Among other terms, the NOV ordered the Defendant to:

- a. Within 90 days of receipt of the Notice of Violation (“NOV”), cut or remove the vegetation from the areas of Dam 572 as described, in accordance with the Dam Safety Regulations, Rule 10A. Cutting or removal shall be in sufficient amounts to allow a thorough visual inspection to be performed. 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 visual inspection of Dam 572, which must include an evaluation of the operability of the low-level outlet;
  - ii. A detailed investigation of Dam 572 to assess the Seepage and Headwall; and
  - iii. Submit a report of the inspection/investigation findings to the RIDEM. The report must specify the actions (in addition to the actions 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 the 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.

- 12.** The Defendant did not request an administrative hearing to contest the NOV.
- 13.** Because the Defendant failed to request an administrative hearing, the NOV, pursuant to R.I. Gen. Laws §§ 42-17.1-2(21)(vi) and 42-17.6-4(b), automatically becomes a Final Compliance Order enforceable in Superior Court.
- 14.** Dam 572 continues to be owned by the Defendant.
- 15.** 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 threat to public safety.

### **COUNT 1**

*(Violation of Final Compliance Order)*

- 16.** Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraph 1 through 15 above.
- 17.** The NOV issued to the Defendant by the RIDEM on May 24, 2016, was issued pursuant to R.I. Gen. Laws §§ 42-17.1-2(21) and 42-17.6-3.
- 18.** In accordance with R.I. Gen. Laws § 42-17.1-2(21)(i), the NOV issued on May 24, 2016, 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 within twenty (20) days of service of the NOV.
- 19.** Defendant, by failing to appeal the NOV, is deemed to have waived its right to an adjudicatory hearing resulting in the NOV automatically transforming into a Final

Compliance Order of the RIDEM.

**20.** 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.

**21.** As of the date of filing this Complaint, the Defendant has 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 572 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**, cut or remove the vegetation from the areas of Dam 572 as described, in accordance with the Dam Safety Regulations, 250-RICR-130-05-1.10(A). Cutting or removal shall be in sufficient amounts to allow a thorough visual inspection to be performed. 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 visual inspection of Dam 572, which must include an evaluation of the operability of the low-level outlet;
    - ii. A detailed investigation of Dam 572 to assess the Seepage and Headwall; and
    - iii. Submit a report of the inspection/investigation findings to the RIDEM. The report must specify the actions (in addition to the actions 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 the 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.

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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:

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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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