

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

Plaintiff, :
: :
: :

vs. :
: :
: :

C.A. No. PM 14 - _____

DAVID A. WHITNEY and :
ANNETTE L. WHITNEY :
: :

Defendants :
: :

VERIFIED COMPLAINT AND
PETITION FOR ENFORCEMENT OF 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”), *DEM’S WATER QUALITY REGULATIONS, AND RHODE ISLAND GENERAL LAWS* and Defendant’s failure to appeal a Notice of Violation issued by the Rhode Island Department of Environmental Management (“RIDEM”).

B. PARTIES

2. Plaintiff, Janet L. Coit, is the duly appointed Director of the Rhode Island Department of Environmental Management (“RIDEM”), whose offices are located at 235 Promenade Street, Providence, Rhode Island.

3. Defendant, David A. Whitney, is a Rhode Island resident living at 2A Andrews Terrace, in the Town of North Smithfield, Rhode Island.

4. Defendant, Annette L. Whitney, is a resident of Rhode Island living at 2A Andrews Terrance in the Town of North Smithfield, Rhode Island.

C. JURISDICTION & VENUE

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

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

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

D. FACTS

8. The subject property (the "Property") is located at 2 Andrews Terrance in the Town of North Smithfield of, Rhode Island, and is also identified by the North Smithfield Assessor Plat 5, Lot 216.

9. The Property includes a dwelling assessed by the Town of North Smithfield as a six (6) bedroom, multiple family, duplex residences.

10. The Defendants own the Property.

11. On September 6, 2011, the Department issued a Notice of Violation ("NOV") alleging violations of Rhode Island General Laws, DEM's Water Quality Regulations, and DEM's OWTS Regulations for, placing any pollutant in a location where it is likely to enter the waters of the State, for the discharges of any pollutant into or conducting any activity which will likely cause or contribute pollution to the waters of the State without having obtained all required approvals from the Director, discharging of wastewater to a watercourse, discharging of

wastewater to the surface of the ground, and failure to submit a repair application for a failed On-site Wastewater Treatment System (“OWTS”). *See* NOV, attached hereto as “Exhibit 1.”

12. The Defendants did not request an administrative hearing to contest the NOV.
13. 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.
 - (b) Within ninety (90) days of receipt of the NOV, submit a formal application and plan to the DEM to repair the OWTS;
 - (c) Commence work on the project in accordance with the method approved by the Director within twenty (20) days of approval.
 - (e) Pay an administrative penalty of three thousand seven hundred (\$3,700.00) dollars.
14. To date, the Defendants have failed to comply with the NOV in that sewage continues to be discharged to the surface of the ground and into the waters of the State from the OWTS at the property and the administrative penalty of three thousand seven hundred (\$3,700.00) dollars has not been paid.
15. Because Defendant 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.
16. The Property continues to be occupied by the Defendants.
17. 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 environmental and public health hazard to the Defendants, their neighbors, tenants, and the general public.
18. A Department inspection of the property on May 26, 2011 revealed no septic system on the property and sewage discharge pipes discharging directly onto the bank of the Branch River

was confirmed by dye testing. See attached Inspection Report, May 26, 2011, Exhibit2.

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 RIDEM on September 6, 2011 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 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 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. Defendants, by failing to appeal the issuance of the NOV, is deemed to have waived their right to an adjudicatory hearing resulting in the NOV automatically transforming in to a Final Compliance Order of the Department.

23. Pursuant to *R.I. Gen. Laws* § 42-17.1-2(21)(v), 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, Defendants have failed to fully comply with the provisions of the Final Compliance Order in that they have failed to reduce the discharge of sewage from the Property, or taken the necessary steps with the Department for the installation of an approved OWTS.

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) Permanent Injunctive Relief, ordering Defendant to submit to the Department within thirty (30) days a repair plan application, certified by a licensed On-site Wastewater Treatment System designer, for the OWTS at the Property. The repair application shall be subject to the Department's review and approval. Upon review, RIDEM shall provide written notification to Defendant either granting formal approval or stating the deficiencies therein. Within fourteen (14) days of receiving a notification of deficiencies, the Defendant shall submit to RIDEM a modified proposal or additional information necessary to correct the deficiencies. Defendant must commence work on the project in accordance with the method approved by the Director within twenty (20) days of approval, and complete such work within one hundred twenty (120) days of said approval to the satisfaction of the Plaintiff as evidenced by the issuance of a Certificate of Conformance by RIDEM; and
- (b) Permanent Injunctive Relief, if the Defendants fail to abide by the terms of paragraph (a) as stated immediately above, including following the time requirements, then the Defendants are to vacate the Property 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 North Smithfield sewerage system; or (2) install an OWTS to the satisfaction of RIDEM as evidenced by the issuance of a Certificate of Conformance; and
- (c) Award of Administrative Penalty, ordering Defendant to pay the full amount of Three Thousand Seven Hundred (\$3,700.00) Dollars to the Plaintiff which is the amount of the administrative penalty assessed in the Plaintiff's NOV of September 6, 2011; and
- (d) 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: May ____, 2015.

**STATE OF RHODE ISLAND
PROVIDENCE COUNTY**

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