

3. 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).
4. Personal Jurisdiction over the Defendant in this case is properly conferred in this Court based on Defendant's registered status and ownership of real property within the State of Rhode Island.
5. Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 9-4-3.

D. FACTS

7. The Defendant owns a dam identified as Sprague Lower Reservoir Dam, State Identification Number 121, located approximately 250 feet southwest of the intersection of Tomahawk Trail and Arrowhead Trail in the town of Smithfield ("Dam 121").
8. Sprague Lower Reservoir Dam is classified as High Hazard.
9. Defendant, Lake Wionkhiege Improvement Association, owns Dam 121.
10. On May 4, 2017, Dam 121 was inspected. The inspection revealed:
 - a. Vegetation on the downstream embankment that did not allow a proper inspection to be performed.
11. On September 8, 2017, RIDEM issued a NOV to the Defendant alleging violations of Dam Safety Regulations for:
 - a. Failing to maintain Dam 121 in a safe condition; and
 - b. Requiring the owner of a dam to provide a fully completed registration form to the RIDEM.
12. The Defendants did not request an administrative hearing to resolve the violations.
13. Among other terms, the NOV ordered the Defendant to:
 - a. **Within 14 days of receipt of the NOV**, complete and submit to the RIDEM the a registration form for Dam 121.

- b. Within 90 days of receipt of the NOV**, cut or remove the vegetation from the area of Dam 121 as described, above in accordance with the RIDEM's Dam Safety Regulations, Part 1.10A. 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.
 - c. 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").
 - d. Within 180 days of receipt of the NOV**, the Dam Engineer must complete a visual inspection of Dam 121 and submit a report of the inspection/investigation finding to the RIDEM. The report must specify the actions necessary, if any, 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 RIDEM's Dam Safety Regulations, Part 1.10B.
 - e.** 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 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**, Respondent shall submit to the RIDEM a modified report, application, and/or schedule or additional information necessary to correct the deficiencies.
 - f.** 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.
- 14.** To date, the Defendant has failed to comply with the NOV.
- 15.** 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.
- 16.** Dam 121 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 threat to public safety.

COUNT 1

(Violation of Final Compliance Order)

- 18.** Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraph 1 through 17 above.
- 19.** The NOV issued to the Defendant by the RIDEM on September 8, 2017, was issued pursuant to R.I. Gen. Laws §§ 42-17.1-2(21) and 42-17.6-3.
- 20.** In accordance with R.I. Gen. Laws § 42-17.1-2(21)(i), the NOV issued on September 8, 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 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.
- 21.** 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.
- 22.** 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.
- 23.** 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 a completed registration form to RIDEM, failed to cut or remove vegetation to allow for a thorough visual inspection and have failed to have a registered professional engineer who is experienced with dam inspection, design, construction and repair complete a visual inspection and submit a report of said inspection to the RIDEM.

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 121 into compliance with the Dam Safety Regulations, in accordance with the NOV and the Final Compliance Order, by ordering Defendants to:
 - a. **Within 14 days**, complete and submit to the RIDEM a dam registration form to RIDEM.
 - b. **Within 90 days**, cut or remove the vegetation from the areas of Dam 121 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.
 - c. **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”).
 - d. **Within 180 days**, the Dam Engineer must complete a visual inspection of Dam 121 and submit a report of the inspection/investigation finding to the RIDEM. The report must specify:
 - i. The actions necessary, if any, to return the dam to a safe condition; and
 - ii. Include a schedule to complete the work
 1. For any proposed repairs, the report must include an application prepared in accordance the Dam Safety Regulations, 250-RICR-130-05-1.10(B):
 - e. 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.
 - f. 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: February ____, 2019.

**STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE**

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

NOTARY PUBLIC

My Commission Expires:

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

Date: February _____, 2019

By her attorney:

/s/Tricia Quest
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