

Records for the Town of Burrillville, Rhode Island (hereinafter referred to as the “Property”).

7. A dam identified as Sucker Pond Dam, State Identification Number 027 (the “Dam”) is located on the Property and is classified as Significant Hazard.
8. On or about January 13, 2009, the Department sent the Defendant a Notice of Hazard Classification and Registration Form, which was delivered on or about January 15, 2009.
9. On or about January 23, 2009, the Department received a completed Dam Registration Form signed by Kevin Bliss listing the Defendant as the owner of the Dam.
10. Upon information and belief, Kevin Bliss is an authorized agent of the Defendant.
11. On or about May 14, 2010, the Department caused the Dam to be inspected. The Inspection revealed excessive vegetation and deadfall that precluded a proper inspection; plywood inhibiting the flow of water through the primary spillway; the absence of a low level gate; and the auxiliary spillway conveying flow through a corrugated plastic pipe.
12. On or about May 26, 2011, the Department issued a Notice of Violation (the “NOV”) to the Defendant for violating *DEM’s Rules and Regulations for Dam Safety* (the “Dam Safety Regulations”), Rule 4A, which requires the owner of a significant hazard dam to maintain the dam in a safe condition.
13. On or about May 28, 2011, the NOV was delivered to Defendant.
14. Among other terms, the NOV required the Defendant to:
 - a. Within thirty (30) days of receipt of the NOV, remove the plywood board that is placed in front of the Current Primary Spillway;
 - b. Within ninety (90) days of receipt of the NOV remove the excess vegetation from the embankment;
 - c. Within one hundred eighty (180) days of receipt of the NOV, retain a professional engineer fully registered in the State of Rhode Island, who is experienced with dam inspections, to complete a visual inspection of Dam 027 in accordance with the Dam Safety Regulations, Rule 11C and submit a report of the inspection findings to DEM. The report must specify the actions (in addition to the actions ordered in the NOV) necessary to return the dam to a safe conditions and include a schedule to complete the work. For any proposed repairs to Dam 027, the report must include an application prepared in accordance with the Dam Safety Regulations, Rule 10B; and

- d. Within one hundred eighty (180) days of receipt of the NOV, retain a professional engineer fully registered in the State of Rhode Island, who is experienced with design, construction and repair, to submit an application to DEM in accordance with the Dam Safety Regulations, Rule 10B to construct a low level gate in the area of the Current Primary Spillway and construct a primary spillway in the area of the Current Auxiliary Spillway that passes the same flow as the Former Primary Spillway. The application must include a schedule to complete the work.
15. After being properly served with a copy of the NOV, the Defendant failed to request an administrative hearing with the Department's Administrative Adjudication Division ("AAD") within the statutorily proscribed twenty (20) day time period.
16. As a result of Defendant's failure to request an administrative hearing, the NOV automatically became a Final Compliance Order enforceable in Superior Court pursuant to R.I. Gen. Laws § 41-17.1.2(21)(vi).
17. On or about March 5, 2012, the Department received a Follow-up Dam Inspection Report (the "Follow-Up Inspection Report") from Defendant's consultant which indicated partial compliance with the NOV.
18. To date the Defendant has failed to fully comply with the NOV in that a repair application to construct a low level gate and a primary spillway has not been submitted to DEM.
19. As of the date of the filing of this Complaint, the Defendant has failed to fully comply with the terms of the Final Compliance Order. Such non-compliance constitutes a hazard to the safety of the general public.

Count I

(Violation of Final Compliance Order)

20. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 19 above, as if set forth herein in their entirety.
21. The NOV issued to the Defendant on or about May 26, 2011, was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).
22. In accordance with R.I. Gen. Laws § 42-17.1-2(21), the aforementioned NOV notified the Defendant of the facts giving rise to the alleged violations; of the statutes and/or regulations violated; and of the Defendant's right to an administrative hearing before AAD.
23. The Defendant failed to timely appeal the NOV and it became a Final Compliance Order pursuant to R.I. Gen. Laws § 42-17.1-2(21).

24. Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi), a Final Compliance Order that has become effective may be enforced through proceedings for injunctive relief, wherein the correctness of the compliance order shall be presumed.

Count II

(Temporary, Preliminary and Permanent Injunctive Relief)

25. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 24 above, as if set forth herein in their entirety.
26. The Department has more than a reasonable probability of success as the NOV is a Final Compliance Order as a result of Defendant's failure to request a timely appeal of the NOV.
27. The Department has no other adequate remedy at law and is threatened with irreparable harm if the dam is allowed to remain in an unsafe condition.
28. The balancing of the equities, including the public interest weighs in favor of providing the Department with injunctive relief as the Dam has been classified as a Significant Hazard and presents a threat to property and may cause economic loss, disruption of lifeline facilities, or other detrimental impacts to the public's health, safety or welfare if it were to fail.
29. Enforcing the Final Compliance Order preserves the status quo in that it mitigates the threat and danger to property and the general public in the event the Dam fails.

WHEREFORE, the Plaintiff, Janet L. Coit, in her capacity as Director of the Department of Environmental Management hereby requests that this honorable Court enter judgment in the Department's favor and grant the following relief:

1. Confirming the NOV as a Final Compliance Order pursuant to R.I. GEN. LAWS § 42-17.1-2(21);
2. Permitting the Plaintiff to Record the NOV on the property in the appropriate Land Evidence Records pursuant to RI. GEN. LAWS § 46-19-4 and § 34-13-1;
3. Preliminary and Permanent Injunctive Relief, ordering Defendant to immediately take all necessary actions to bring the Dam into compliance with the Department's Dam Safety Regulations by performing any and all actions required by the Department as specified in the NOV; and
4. Such other relief as this Court deems just and equitable.

Respectfully submitted:
JANET L. COIT, in her capacity as DIRECTOR,
Rhode Island Department of Environmental
Management
By her attorney:

/s/ Christina A. Hoefsmit
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Dated: August 4, 2016

VERIFICATION

I, Paul W. Guglielmino, Principal Civil Engineer for the Department of Environmental Management, Office of Compliance and Inspection, an authorized representative of the Director, first being duly sworn upon oath, hereby state that I have reviewed the factual allegations set forth in this Complaint and Petition for Injunctive Relief and that such factual allegations are, to the best of my knowledge and belief, true and accurate.

Paul W. Guglielmino
Principal Civil Engineer

STATE OF RHODE ISLAND
PROVIDENCE COUNTY

Subscribed and sworn to before me this _____ day of August, 2016.

NOTARY PUBLIC
My commission expires: