

an administrative hearing in response to an NOV issued by the RIDEM. The Plaintiff seeks permanent injunctive relief enforcing the NOV as a final compliance order, including, but not limited to, the remediation of the Property and payment of all administrative penalties as set forth therein.

Parties

1. Plaintiff, Janet L. Coit, is the duly appointed Director of RIDEM, whose offices are located at 235 Promenade Street, Providence, Rhode Island.

2. Dennis F. Conte, (the “Defendant”), is a resident of Rhode Island, with an address of 108 Old Pocasset Road, Johnston, Rhode Island.

Jurisdiction and Venue

3. Subject matter jurisdiction in this case is properly conferred in the Court pursuant to R.I. Gen. Laws §§ 42-17.1-2(21), 42-17.6-4(c), and 8-2-13.

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

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

Factual Background

6. The subject property is located at 108 Old Pocasset Road, in the Town of Johnston, Rhode Island and identified as Assessor’s Map 44, Lot 414 in the Town of Johnston Land Evidence Records (the “Property”).

7. The Defendant, Dennis F. Conte (“Conte”), is the owner of the Property.

8. The Defendant operates a business known as Chumlee’s Trash and Demo at the Property. Chumlee’s Trash and Demo is not registered as a business entity with the Office of the Secretary of State for the State of Rhode Island.

9. On June 26, 2006, RIDEM issued a Notice of Violation (“NOV”) to Defendant for operating a solid waste management facility without a license and disposing of solid waste at a location other than a licensed solid waste management facility in violation of Rhode Island General Laws. *See Exhibit 1*, attached hereto the Notice of Violation.

10. Specifically, the NOV alleged the following statutory violations:

- a. R.I. GEN. LAWS § 23-18.9-5 – relating to disposal of refuse at other than a licensed solid waste management facility;
- b. R.I. GEN. LAWS § 23-18.9-8 – relating to operating a solid waste management facility without a license.

11. The NOV was properly served upon the Defendant by certified mail, return receipt requested. *See Exhibit 1*, attached hereto.

12. The NOV stated that a January 31, 2006, inspection revealed approximately 447 cubic yards of solid waste deposited on the ground and land filled on the property. The solid waste consisted of scrap metal, white goods, construction and demolition debris and other mixed solid waste as evidenced by:

- a. Observation of solid waste including scrap metal, white goods, construction and demolition debris and other mixed solid waste;
- b. Observation of Defendant pushing dirt over solid waste with a plow on a pickup truck;
- c. A total of approximately 527 cubic yards of solid waste was observed at the Property:
 - i. Of the 527 cubic yards of solid waste observed at the Property, at least 447 cubic yards was being disposed, with another undetermined amount of solid waste being landfilled;
 - ii. A total of approximately 80 cubic yards of solid waste was being stored in containers and had been on the Property for at least one week. Observation of multiple 20 cubic yard and 30 cubic yard containers full of solid waste and construction and demolition debris;

- d. Photographs showing the solid waste deposited on the ground and land filled on the property;

See Exhibit 2, attached hereto the January 31, 2006 Inspection Report.

13. The NOV required that Defendant take the following actions:
 - a. Immediately cease operating a solid waste management facility on the property;
 - b. Immediately cease the disposal of solid waste on the property;
 - c. Immediately begin the removal and proper disposal of all solid waste from the property to a licensed solid waste management facility;
 - d. Within sixty (60) days of receipt of this Notice of Violation (“NOV”), complete the removal and disposal of all solid waste from the property;
 - e. Within ten (10) days arrange to dig test pit excavation in the presence of a representative of this office to determine the extent of solid waste that has been landfilled;
 - f. Within ten (10) days of completion of the disposal of solid waste, submit documentation of disposal (e.g. receipts, bills, weight slips, etc.) to the RIDEM Office of Compliance and Inspection, 235 Promenade Street, Room 220, Providence, RI 02908-5767, Attn: James Ashton.

See Exhibit 1, attached hereto.

14. The NOV assessed an administrative penalty of Twenty Five Thousand Dollars (\$25,000.00). See Exhibit 1, attached hereto.

15. In response to the NOV, on July 18, 2006, Defendant requested an informal meeting with Mr. James M. Ashton, Principal Environmental Scientist with RIDEM Office of Compliance and Inspection. See Exhibit 3, attached hereto July 18, 2006 Correspondence.

16. On July 26, 2006, an informal meeting with Mr. Ashton and the Defendant took place at RIDEM. As a result of the meeting, Defendant agreed to remove all solid waste from his property and agreed to dig test pit excavations. At this meeting, Mr. Ashton informed the

Defendant that he would need to request a formal hearing, pursuant to the prior NOV that RIDEM issued in order to protect his rights to an administrative proceeding. *See Exhibit 4*, attached hereto July 26, 2006 Notes.

17. Subsequent to the July 26, 2006 meeting, the RIDEM has performed the following inspections of the Property and identified the following continuing violations:

- a. August 1, 2006: additional 59 cubic yards of new solid waste consisting of construction & demolition debris deposited since last inspection on January 31, 2006. *See Exhibit 5*, attached hereto the August 1, 2006 Inspection Report.
- b. September 15, 2006: 496 cubic yards total of solid waste on site including painted and pressure treated construction and demolition debris, scrap metal, white goods, vehicle parts and tires. *See Exhibit 6*, attached hereto the September 15, 2006 Inspection Report.
- c. October 17, 2006: 451 cubic yards total of solid waste on site, including construction and demolition debris, painted and treated construction and demolition debris, scrap metal, white goods, vehicle parts and other mixed solid waste. *See Exhibit 7*, attached hereto the October 17, 2006 Inspection Report.
- d. November 30, 2006: 456 cubic yards total of solid waste consisting of the same as observed during the October 17, 2006 inspection. *See Exhibit 8*, attached hereto the November 30, 2006 Inspection Report.
- e. April 3, 2012: 325.5 cubic yards of solid waste on site including wood, tires, plastic waste, scrap metal, vehicle parts and tires, construction and demolition debris and other mixed solid waste. *See Exhibit 9*, attached hereto the April 3 and 6, 2012 Inspection Report.

18. Defendant failed to comply with the NOV and did not file a written request for an administrative hearing within twenty (20) days following the service of the NOV as required by the Rhode Island General Laws, Sections 42-17.1-2(21) and 42-17.7-9.

19. Pursuant to the Rhode Island General Laws, Sections 42-17.1-2(21)(v) and 42-17.6-4(c), the NOV has become a final compliance order fully enforceable against the Defendant upon the institution of injunction proceedings in the Superior Court.

20. On November 30, 2015, the Office of the Attorney General submitted correspondence to Defendant notifying him of its intent to enforce the Final Compliance Order.

21. Prior to the filing and service of this Complaint, the RIDEM performed another inspection wherein it discovered continuing violation of the Rhode Island General Laws and continuing violation of the Final Compliance Order. *See Exhibit 10*, attached hereto the November 23, 2015 Inspection Report.

COUNT I
(Violation of a Final Compliance Order)

22. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 21 above.

23. The NOV issued to the Defendant by RIDEM on June 26, 2006, was issued pursuant to R.I. Gen. Laws §§ 42-17.1-2 (21) and 42-17.6-2.

24. In accordance with R.I. Gen. Laws §§ 42-17.1-2 (21) and 42-17.7-9, the NOV issued on June 26, 2006, notified Defendant of the facts that gave RIDEM 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 RIDEM's Administrative Adjudication Division by filing a request for hearing with twenty (20) days of service of the NOV.

25. In accordance with the R.I. Gen. Laws, § 42-17.6-3(a), the NOV included the following:

- a. A concise statement of the alleged act or omission for which the administrative penalty was sought to be assessed;
- b. Each law, rule, regulation, order, permit, license, or approval which was not complied with as a result of the alleged act or omission;
- c. The amount which the director sought to assess as an administrative

penalty for each alleged act or omission;

- d. A statement of the person's right to an adjudicatory hearing on the proposed assessment;
- e. The requirements the person must comply with to avoid being deemed to have waived the right to an adjudicatory hearing; and
- f. The manner of payment thereof if the person elects to pay the penalty and waive the adjudicatory hearing.

26. Pursuant to R.I. Gen. Laws, § 42-17.1-2(21)(vi) and 42-17.6-4(c), Defendant, by failing to appeal the issuance of the NOV, is deemed to have waived his right to an adjudicatory hearing resulting in the NOV automatically transforming into two final compliance orders; one for the injunctive relief identified therein and one requiring payment of the administrative penalty assessed therein.

27. Pursuant to R.I. Gen. Laws § 42-17.1-2 (21), a final compliance order for injunctive relief that has become effective may be enforced through proceedings for injunctive relief wherein the correctness of the compliance order shall be presumed and the party attacking the compliance order shall bear the burden of proof.

28. Pursuant to R.I. Gen. Laws, §42-17.6-4(c), if a person waives his right to an adjudicatory hearing on the proposed administrative penalty, the proposed administrative penalty shall be final immediately upon the waiver.

29. As of the date of filing this Complaint, Plaintiff asserts:

- a. Defendant has not complied with the provisions of the Final Compliance Order in that the Property continues to be operated as a solid waste management facility without a license;
- b. Defendant has not submitted a written plan and schedule for solid waste removal;
- c. Defendant has not implemented a plan for solid waste removal, nor completed and disposed of said waste at a licensed solid waste

management facility; and

- d. Defendant has not paid the Twenty-Five Thousand Dollar \$25,000 administrative penalty assessed in the NOV.

WHEREFORE, Plaintiff, Janet L. Coit, in her capacity as Director of the Rhode Island Department of Environmental Management, by and through her attorney, Peter F. Kilmartin, in his capacity as Attorney General for the State of Rhode Island, hereby requests that Judgment be entered in favor of the Plaintiff and that Plaintiff be granted the following relief:

- (a) Temporary, Preliminary and Permanent Injunctive Relief, enjoining Defendant from operating a solid waste management facility on the Property;
- (b) Temporary, Preliminary and Permanent Injunctive Relief, enjoining Defendant from disposing of solid waste on the Property;
- (c) Temporary, Preliminary and Permanent Injunctive Relief ordering the Defendant to immediately begin the removal and proper disposal of all solid waste from the Property to a licensed solid waste management facility;
- (d) Temporary, Preliminary and Permanent Injunctive Relief, ordering the Defendant, within sixty (60) days of this order, to complete removal and disposal of all solid waste from the Property to a licensed solid waste management facility;
- (e) Temporary, Preliminary and Permanent Injunctive Relief , ordering the Defendant, within ten (10) days of the completion of the disposal of solid waste from the Property, to submit documentation of disposal (ie. receipts, bills, weight slips) to the RIDEM Office of Compliance and Inspection, 235 Promenade Street, Room 220, Providence, RI 02908-5767, Attn: David Chopy;
- (f) That Defendant immediately pay Twenty Five Thousand Dollars (\$25,000.00) to the Plaintiff, which is the amount of the administrative penalty assessed in the NOV dated June 26, 2006;
- (g) Such further relief as this Court deems just and equitable in accordance with the facts of this case.

COUNT II

(Enforcement of Final Administrative Penalty)

- 30. Plaintiff hereby restates and incorporates by reference the allegations contained in

Paragraphs 1 through 29 above.

31. The NOV issued to the Defendant by RIDEM on June 26, 2006, was issued pursuant to R.I. Gen. Laws §§ 42-17.1-2 (21) and 42-17.6-2.

32. In accordance with R.I. Gen. Laws §§ 42-17.1-2 (21) and 42-17.7-9, the NOV issued on June 26, 2006, notified Defendant of the facts that gave RIDEM 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 RIDEM's Administrative Adjudication Division by filing a request for hearing with twenty (20) days of service of the NOV.

33. In accordance with the R.I. Gen. Laws, § 42-17.6-3(a), the NOV included the following:

- a. A concise statement of the alleged act or omission for which the administrative penalty was sought to be assessed;
- b. Each law, rule, regulation, order, permit, license, or approval which was not complied with as a result of the alleged act or omission;
- c. The amount which the director sought to assess as an administrative penalty for each alleged act or omission;
- d. A statement of the person's right to an adjudicatory hearing on the proposed assessment;
- e. The requirements the person must comply with to avoid being deemed to have waived the right to an adjudicatory hearing; and
- f. The manner of payment thereof if the person elects to pay the penalty and waive the adjudicatory hearing.

34. Defendant failed to file with the director or the clerk of the administrative adjudication division of the RIDEM a written statement denying the occurrence of any of the acts or omissions alleged by the director in the notice, or asserting that the money amount of the

proposed administrative penalty is excessive as required pursuant to R.I. Gen. Laws, § 42-17.6-4.

35. Pursuant to R.I. Gen. Laws, § 42-17.6-4(c), Defendant, by failing to appeal the issuance of the NOV, is deemed to have waived his right to an adjudicatory hearing resulting in the NOV automatically transforming into two final compliance orders; one for the injunctive relief identified therein and one requiring payment of the administrative penalty assessed therein.

36. Pursuant to R.I. Gen. Laws, §42-17.6-4(c), if a person waives his right to an adjudicatory hearing on the proposed administrative penalty, the proposed administrative penalty shall be final immediately upon the waiver.

37. As of the date of filing this Complaint, Plaintiff asserts Defendant has not paid the Twenty-Five Thousand Dollar \$25,000 administrative penalty assessed in the NOV.

WHEREFORE, Plaintiff, Janet L. Coit, in her capacity as Director of the Rhode Island Department of Environmental Management, by and through her attorney, Peter F. Kilmartin, in his capacity as Attorney General for the State of Rhode Island, hereby demands judgment in the amount of \$25,000, which amount represents the Administrative Penalty as assessed in the NOV.

VERIFICATION

I, Tracey Tyrrell, Supervising Environmental Scientist 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.

Tracey Tyrrell
Supervising Environmental Scientist
Office of Compliance and Inspection
Dated: March ____, 2016.

**STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE**

Subscribed and sworn to before me this ____ day of March, 2016.

NOTARY PUBLIC
My commission expires:

Respectfully Submitted,

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

By her attorney,

**PETER F. KILMARTIN
ATTORNEY GENERAL FOR
THE STATE OF RHODE ISLAND**

By his Attorney,

/s/ Matthew I. Shaw

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