

C. JURISDICTION & VENUE

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

6. Personal jurisdiction over the Defendants in this case is properly conferred in this Court based on Defendants' 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 38 Broadway (Prudence Island) in the Town of Portsmouth, Rhode island and is also identified by the Town of Portsmouth as Assessor's Plat 84, Lot 42.

9. The Property includes a dwelling assessed by the Town of Portsmouth as a single family residence with three bedrooms and one bathroom (the "Dwelling").

10. The Defendants, David A. Day and Susan J. Day, own the Property.

11. On August 26, 2015, the RIDEM issued a NOV alleging violations of the RIDEM's OWTS Regulations for the discharge of sewage to the surface of the ground and required submittal of a repair application for a failed OWTS.

12. The Defendants did not request an administrative hearing to contest the NOV.

13. Among other terms, the NOV required the Defendants 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, and arrange to have the OWTS pumped by a permitted septage transporter as frequently as necessary to prevent the OWTS from overflowing or breaking out onto the surface of the ground.
- (b) Immediately cease use of any/all laundry washing machine(s) located in the Dwelling. No use of the laundry washing machines is allowed until

the OWTS is fully repaired.

- (c) Within thirty (30) days of receipt of the NOV, submit a written proposal for a permanent solution to the violation that must include an inspection of the OWTS by a licensed OWTS designer to determine the cause of the failure (the "System Assessment"). The System Assessment must be signed by the licensed designer who inspected the OWTS, must identify the size and location of the OWTS components, must set forth the probable cause(s) for the failure, and propose a plan, including a proposed timetable, for any repair work for the correction of the failure. If determined that the OWTS needs repair a formal application and plan must be submitted to the RIDEM in accordance with RIDEM's OWTS Regulations;
- (d) The Application shall be subject to the RIDEM's review and approval. Upon review, the RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. With 14 days of receiving a notification of deficiencies in the Application a modified proposal or additional information necessary to correct the deficiencies shall be submitted to RIDEM;
- (e) Commence work on the project in accordance with the method approved by the RIDEM within twenty (20) days of approval and complete work within 120 days;
- (f) Pay an administrative penalty of One Thousand Dollars (\$1,000.00).

14. To date, the Defendants have failed to comply with the NOV in that no written proposal or repair application have been submitted to RIDEM and the administrative penalty of One Thousand Dollars (\$1,000.00) has not been paid.

15. Because the Defendants 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 owned by the Defendants.

17. As of the date of this Complaint, the Defendants have failed to 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, and the general public.

COUNT I
(Violation of a Final Compliance Order)

18. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 17 above.

19. The NOV issued to the Defendants by the RIDEM was issued pursuant to *R.I. Gen. Laws* § 42-17.1-2(21).

20. In accordance with *R.I. Gen. Laws* § 42-17.1-2(21)(i), the NOV notified the Defendants of the facts that gave the RIDEM reasonable grounds to believe that a violation of law had occurred; of the statutes and/or regulation(s) violated; and of the Defendants' right to request an administrative hearing before the RIDEM's Administrative Adjudication Division by filing a request for hearing with twenty (20) days of service of the NOV.

21. The Defendants accepted service of the NOV on September 19, 2015.

22. The Defendants, by failing to appeal the issuance of the NOV, are deemed to have waived their right to an adjudicatory hearing resulting in the NOV automatically transforming in to a Final Compliance Order of the RIDEM.

23. 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 Defendants.

24. As of the date of filing this Complaint, the Defendants have failed to comply with the provisions of the Final Compliance Order in that they have failed to submit a written

proposal for a permanent solution which includes an inspection of the OWTS by a licensed OWTS designer, no repair application has been submitted to the RIDEM, and the administrative penalty has not been paid.

COUNT 2

(Violation of Final Compliance Order Administrative Penalties)

25. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 24 above.

26. The NOV issued to the Defendants was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

27. The administrative penalties assessed in the NOV issued to the Defendants were assessed pursuant to R.I. Gen. Laws §42-17.6-3.

28. In accordance with R.I. Gen. Laws § 42-17.6-3(a), the aforementioned NOV notified the Defendants of the facts giving rise to the alleged violations; of the statutes and/or regulations violated; the amount of the assessed administrative penalty for each violation; of the Defendants' right to request an administrative hearing before the RIDEM's Administrative Adjudicatory Division by filing a request for hearing within twenty (20) days of service of the NOV and that their failure to request a hearing in the time proscribed would result in the associated administrative penalty proposed becoming final; and the manner of payment thereof.

29. Pursuant to R.I. Gen. Laws §42-17.6-4(b) and §42-17.1-2(21)(i) Defendants, by failing to appeal the issuance of the NOV and the proposed administrative penalty, are deemed to have waived their rights to an adjudicatory hearing resulting in the NOV automatically transforming in to a Final Compliance Order of the RIDEM and the proposed administrative penalty became final.

30. 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 Defendants.

31. The Defendants have failed or refused to comply with the administrative penalties assessed in the NOV.

32. Each day on non-compliance represents a continuing violation of the RIDEM's OWTS Regulations and constitute a separate offense subject to separate administrative penalties.

WHEREFORE, Plaintiff, Janet L. Coit, in her capacity as Director of the RIDEM, hereby requests that Judgment be entered in favor of the Plaintiff and that Plaintiff be granted the following relief:

- (a) Preliminary and Permanent Injunctive Relief, ordering the Defendants to immediately pump the OWTS as to prevent any and all sanitary sewage from overflowing on the Property and cease any and all use of laundry washing machines until the OWTS is fully repaired as evidenced by the issuance of a Certificate of Conformance by the RIDEM to the Defendants;
- (b) Permanent Injunctive Relief, ordering the Defendants to submit to the RIDEM within thirty (30) days a written proposal for a permanent solution to the OWTS failure that must include an inspection of the OWTS by a licensed OWTS designer to determine the cause of the failure (the "System Assessment"):
 1. Said System Assessment must be signed by the licensed designer who inspected the OWTS, it must identify the size and location of the OWTS components, it must set forth the probable cause(s) for the failure, and propose a plan, including a proposed timetable, for any repair work of the correction of the failure. If it is determined that the OWTS needs repair a formal application and plan must be submitted to the RIDEM in accordance with the RIDEM's OWTS Regulations;

2. The formal application and plan (the "Application") shall be subject to the RIDEM's review and approval. Upon review, the RIDEM shall provide written notification to the Defendants either granting formal approval or stating the deficiencies therein. Within 14 days of receiving a notification of deficiencies in the Application, the Defendants must submit to the RIDEM a modified proposal or additional information necessary to correct the deficiencies;
 3. Once the Application is approved, the Defendants shall commence work on the project in accordance with the method approved by the RIDEM within 20 days of approval and complete such work within 120 days of said approval.
- (c) Permanent Injunctive Relief, if the Defendants fail to abide by the terms of paragraph (b) and its subsections, as stated immediately above, including following the time requirements, then the Defendants are to ensure that the Dwelling is vacant within thirty (30) days of Defendants' failure to abide by the above stated timeline and to keep the Dwelling vacant until such time that the terms of paragraph (b) and its subsections are completed to the satisfaction of the RIDEM as evidenced by the issuance of a Certificate of Conformance; and
- (d) Award of Administrative Penalty, ordering the Defendants to pay the full amount of One Thousand Dollars (\$1,000.00) to the Plaintiff which is the amount of the administrative penalty assessed in the NOV; and
- (e) Such further relief as this Court deems just and equitable in accordance with the facts of this case.

VERIFICATION

I, David E. Chopy, Chief of 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 to the best of my knowledge and belief, are true and accurate.

For the Director,

By: 

DAVID E. CHOPY, Chief
Office of Compliance and Inspection
Dated: May 19, 2016.

**STATE OF RHODE ISLAND
PROVIDENCE COUNTY**

Subscribed and sworn to before me this 20th day of May, 2016.



NOTARY PUBLIC
My commission expires: 10-22-18

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

By her attorney,

/s/Tricia Quest

Tricia Quest., Esq. (#7362)
RIDEM Office of Legal Services
235 Promenade Street, Fourth Floor
Providence, RI 02908
(401) 222-6607
(401) 222-3378 (facsimile)
tricia.quest@dem.ri.gov