



Hartford Avenue, in the Town of Johnston Rhode Island.

4. Defendant, Kenneth LeBlanc, is a resident of Rhode Island with an address of 2774 Hartford Avenue, Johnson, Rhode Island, 02919.

**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)(vi).

6. Personal jurisdiction over the Defendants in this case is properly conferred in this Court based on Defendants' presence and ownership of real property 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 2774 Hartford Avenue in the Town of Johnston, Rhode Island, and is also identified by the Town of Johnston as Assessor's Plat 57, Lot 40.

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

10. The Defendants, Deborah DiIorio and Kenneth LeBlanc, own the Property.

11. On November 25, 2013, the RIDEM issued a NOV alleging violations of the OWTS Regulations for the discharge of sewage to the surface of the ground from the OWTS and requiring submittal of a repair application for a failed OWTS.

12. The NOV was delivered to each of the Defendants at the Property and signed by Peggy O'Neill as evidenced by the green return of service card from the United States Postal Service.

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

14. Among other terms, the NOV required the Defendants to:

- a. Immediately take steps to reduce the discharge of sewage to the OWTS, such as through the installation and use of water conservation devices and fixtures, and arrange to have to 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. 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 it is determined that the OWTS needs repair and public sewers will not be available for connection within 1 year, a formal application and plan must be submitted to the DEM in accordance with the DEM's OWTS Regulations (the "Application").
- c. The System Assessment and Application shall be subject to RIDEM's review and approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies in the Application, submit to the DEM a modified proposal or additional information necessary to correct the deficiencies.
- d. 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 or other date specified by the DEM.
- e. Pay an administrative penalty of One Thousand (\$1,000.00) Dollars.

15. To date, the Defendants have failed to comply with the NOV in that no written proposal for a permanent solution has been submitted, no formal application and plan to repair the OWTS has been submitted to RIDEM and the administrative penalty of One Thousand (\$1,000.00) Dollars has not been paid.

16. Because the Defendants failed to request an administrative hearing, the NOV and

associated administrative penalty contained within (pursuant to R.I. Gen. Laws §§42-17.1.2(21)(vi) and 42-17.6-4(b)) automatically became a Final Compliance Order enforceable in Superior Court.

17. The Property continues to be owned by the Defendants.

18. 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, and the general public.

### **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 Defendants by RIDEM on November 25, 2013 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 issued on November 25, 2013 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 Defendants' 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, are deemed to have waived their right to an adjudicatory hearing resulting in the NOV automatically transforming into 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 to RIDEM a formal application and plan to repair the OWTS nor paid the administrative penalty.

## **COUNT II**

### *(Violation of a 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 on November 25, 2013 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

27. The administrative penalty assessed in the NOV issued to the Defendants on November 25, 2013 was 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 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 prescribed 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 into a Final Compliance Order of the RIDEM and the proposed administrative penalty becomes 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. Defendants have failed to pay the administrative penalty assessed in the November 25, 2013 NOV.

32. Each day of 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 Rhode Island Department of Environmental Management, hereby requests that Judgment be entered in favor of the Plaintiff and that the Plaintiff be granted the following relief.

- (a) Preliminary and Permanent Injunctive Relief, ordering Defendants to have the OWTS pumped by a permitted septage transporter as often as necessary to prevent any and all sanitary sewage from overflowing on the Property and cease any and all use of laundry washing machines at the Dwelling until the OWTS is fully repaired as evidenced by the issuance of a Certificate of Conformance by the RIDEM to the Defendants or the RIDEM determines that the OWTS can function properly without repair;
- (b) Permanent Injunctive Relief, ordering 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, 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 to

correct the failure. If it is determined that the OWTS needs repair and public sewers will not be available for connection within 1 year, 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 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 paragraphs (a) and (b) and its subsections, as stated immediately above, including following the time requirements, then the Defendants are to ensure that the Property is vacant within thirty (30) days of Defendants' failure to abide by the above stated timeline and to keep the Property vacant until such time that either: (1) the Property is connected to the Town of Johnston sewerage system; or (2) the OWTS is repaired to the satisfaction of RIDEM as evidenced by the issuance of a Certificate of Conformance; and
- (d) Award of Administrative Penalty, ordering Defendants to pay the full amount of One Thousand (\$1,000.00) Dollars to the Plaintiff which is the amount of the administrative penalty assessed in the NOV of November 25, 2013; and
- (e) Such further relief as this Court deems just and equitable in accordance with the facts of this case.

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**VERIFICATION**

I, David E. Chopy, Chief 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: \_\_\_\_\_  
DAVID E. CHOPY, Chief  
Office of Compliance and Inspection  
Dated: September \_\_, 2016.

**STATE OF RHODE ISLAND  
PROVIDENCE COUNTY**

Subscribed and sworn to before me this \_\_\_\_ day of September, 2016.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:

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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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