

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 25 Shore Drive in the Town of Johnston, Rhode Island, and is also identified by the Town of Johnston as Assessor Plat 62, Lot 7.

9. The Property includes a dwelling assessed by the Town of Johnston as single family residence with three bedrooms and one bathroom.

10. The Defendant, Shirley Langlais has a life estate in said property, and Defendant Shirley Barboza, has a life estate as well as a tenancy in common with two other individuals.

11. On August 5, 2011, the Department issued a NOV alleging violations of the OWTS Regulations for, use of a failed OWTS, discharging of wastewater into any open or covered drain tributary to a watercourse, discharge of sewage to the surface of the ground, and requiring the 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 Notice of Violation 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) Within forty-five (45) 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, and submit a formal application and plan to the DEM to repair the OWTS;
- (c) Commence work on the project in accordance with the method approved by the Director within twenty (20) days of approval and complete within one hundred and twenty (120) days.
- (d) Pay an administrative penalty of four thousand two hundred (\$4,200.00) dollars.

14. To date, the Defendants have failed to comply with the NOV in that there continues to be evidence of sewage being discharged to the surface of the ground, no written proposal or formal application and plan to repair the OWTS has been submitted to RIDEM and the administrative penalty of four thousand two hundred (\$4,200.00) dollars has not been paid.

15. Because 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 and occupied by the Defendants.

17. A Department inspection of the property on May 1, 2015, revealed continued evidence of a failing OWTS by the presence of lush green vegetation in soil absorption field/cover area.

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 August 5, 2011 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 August 5, 2011 notified 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 Defendant's 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 in to a Final Compliance Order of the Department.

23. Pursuant to *R.I. Gen. Laws* § 42-17.1-2(21)(v), 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 has failed to reduce the discharge of sewage to the OWTS and to have the OWTS pumped as necessary to prevent sewage from the OWTS from overflowing onto the surface of the ground; the Defendants have failed to submit a written proposal for a permanent solution to the violation, and have not paid the administrative penalty.

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 Plaintiff be granted the following relief:

- (a) Preliminary and Permanent Injunctive Relief, ordering Defendants to immediately pump the OWTS as to prevent any and all sanitary sewage from overflowing on the Property;
- (b) Permanent Injunctive Relief, ordering Defendants to submit to the Department within thirty (30) days a written proposal for a permanent solution to the violations, which 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, 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. For any proposed repair or alterations to the OWTS, the system assessment must include the submittal of a formal application and plan to the DEM’s Office of Water Resources in accordance with the OWTS Regulations (the “Application”). Any repairs or modifications to the OWTS require the prior approval of DEM. The repair application shall be subject to the Department’s review and approval. Upon review, RIDEM shall provide written notification to Defendants either granting formal approval or stating the deficiencies therein. Within fourteen (14) days of receiving a notification of deficiencies, the Defendants shall submit to RIDEM a modified proposal or additional information necessary to correct the deficiencies. Defendants must commence work on the project in accordance with the method approved by the Director within twenty (20) days of approval, and complete such work within one hundred twenty (120) days of said approval to the satisfaction of the Plaintiff as evidenced by the issuance of a Certificate of Conformance by RIDEM; and
- (c) Permanent Injunctive Relief, if the Defendants fail to abide by the terms of paragraph (b) as stated immediately above, including following the time requirements, then the Defendants are to vacate the Property within thirty (30) days of Defendant’s failure to abide by the above stated timeline and to keep the Property vacant until such time that the Property can either be: (1) connected to the Town of Johnston sewerage system; or (2) repair or install an OWTS to the satisfaction of RIDEM as evidenced by the issuance of a Certificate of Conformance; and
- (d) Award of Administrative Penalty, ordering Defendant to pay the full amount of Four Thousand Two Hundred (\$4,200.00) Dollars to the Plaintiff which is the amount of the administrative penalty assessed in the NOV of August 5,

2011; and

- (e) Such further relief as this Court deems just and equitable in accordance with the facts of this case.

VERIFICATION

I, Patrick J. Hogan, P.E., Principal Sanitary Engineer 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.

For the Director,

PATRICK J. HOGAN, P.E.
Principal Sanitary Engineer
Office of Compliance and Inspection
Dated: August ____, 2015.

**STATE OF RHODE ISLAND
PROVIDENCE COUNTY**

Subscribed and sworn to before me this ____ day of August, 2015.

NOTARY PUBLIC
My commission expires:

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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