

3. Defendant, Paul J. McCabe, Jr. is a resident of the State of Rhode Island with an address of 12 Allen's Cove Road in the town of Charlestown, Rhode Island.

C. JURISDICTION & VENUE

4. 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).

5. Personal jurisdiction over the Defendant in this case is properly conferred in this Court based on Defendant's presence and ownership of real property within the State of Rhode Island.

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

D. FACTS

7. The subject property (the "Property") is located at 12 Allen's Cove Road in the Town of Charlestown, Rhode Island, and is also identified by the Town of Charlestown as Assessor's Plat 9, lot 216.

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

9. The Defendant, Paul J. McCabe, Jr., owns the Property.

10. On December 31, 2010, 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.

11. The Defendant requested an administrative hearing to contest the NOV.

12. The Parties entered into a Consent Agreement on or about October 6, 2011 to resolve the NOV.

13. Among other terms, the Consent Agreement required the Defendant to:

- a. Retain a licensed septage hauler to pump the OWTS as often as necessary to prevent any and all sanitary sewage from overflowing to the surface of the ground until the OWTS is repaired to RIDEM's satisfaction as evidenced by the issuance of a Certificate of Conformance by RIDEM or RIDEM determines that the OWTS can function properly without repair.
- b. Discontinue all use of the washing machine at the Dwelling until the OWTS is repaired to RIDEM's satisfaction as evidenced by the issuance of a Certificate of Conformance by RIDEM or RIDEM determines that the OWTS can function properly without repair.
- c. 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. For any proposed repair or alteration to the OWTS, the System Assessment must include the submittal of a formal application and plan to the RIDEM in accordance with the OWTS Regulations (the "Application"). Any repairs or modifications to the OWTS require the prior approval of RIDEM.
- d. 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.
- e. On or before December 15, 2011, the Defendant was to complete the work for the OWTS in accordance with the method approved by RIDEM (unless otherwise expressly authorized by RIDEM in writing to complete work at a later time).
- f. The administrative penalty was waived.

14. To date, the Defendant has failed to comply with the Consent Agreement in that no written proposal for a permanent solution has been submitted to RIDEM, the OWTS has not been repaired, and sewage from the OWTS continues to overflow to the surface of the ground.

15. The Consent Agreement, by its terms, has the full force and effect of a Final Compliance Order issued after a full hearing on the merits pursuant to the Administrative

Procedures Act, R.I. Gen. Laws §42-35-1 et seq., from which no appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Law §42-17.1-2(21)(vi).

16. The Property continues to be owned by the Defendant.

17. As of the date of this Complaint, the Defendant has failed to fully comply with the terms of the Consent Agreement. Such non-compliance constitutes a serious environmental and public health hazard to the Defendant, his 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 Defendant by RIDEM on December 31, 2010 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 issued on December 31, 2010 notified the Defendant 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.

21. Defendant requested a hearing to the Administrative Adjudication Division and the Parties entered into a Consent Agreement that has the full force and effect of a Final Compliance Order.

22. 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 Defendant.

23. As of the date of filing this Complaint, the Defendant has failed to submit a proposal for a permanent solution or repaired the OWTS.

COUNT II

(Violation of a Final Compliance Order Penalties)

24. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 23 above.

25. The NOV issued to the Defendant on December 31, 2010 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

26. The administrative penalty assessed in the NOV issued to the Defendant was waived pursuant to the terms of the Consent Agreement.

27. The Consent Agreement contains a stipulated penalty of One Hundred (\$100.00) Dollars a month for each and every month during which the Defendant fails to comply with the “Conditions” of the Consent Agreement.

28. Defendant has failed to pay the stipulated penalty as stated in the Consent Agreement for his non-compliance.

29. 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 Defendant to retain a licensed septage hauler to pump the OWTS as often as necessary to prevent

any and all sanitary sewage from overflowing to the surface of the ground and discontinue all use of the washing machine at the Dwelling until the OWTS is repaired to RIDEM's satisfaction as evidenced by the issuance of a Certificate of Conformance by RIDEM or RIDEM determines that the OWTS can function properly without repair.

- (b) Permanent Injunctive Relief, ordering the Defendant 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 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 Defendant either granting formal approval or stating the deficiencies therein. Within 14 days of receiving a notification of deficiencies in the Application, the Defendant must submit to RIDEM a modified proposal or additional information necessary to correct the deficiencies;
 3. Once the Application is approved, the Defendant 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 Defendant fails to abide by the terms of paragraphs (a) and (b) and its subsections, as stated immediately above, including following the time requirements, then the Defendant is to ensure that the Property is vacant within thirty (30) days of Defendant's failure to abide by the above stated timeline and shall keep the Property vacant until such time that the OWTS is repaired to the satisfaction of RIDEM as evidenced by the issuance of a Certificate of Conformance by the RIDEM; and
- (d) Award of Stipulated Penalty, ordering Defendant to pay the full amount of the stipulated penalty, currently in the amount of Five Thousand Six Hundred (\$5,600.00) Dollars and any further accrual of said stipulated penalty forthwith; 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 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: August __, 2016.

**STATE OF RHODE ISLAND
PROVIDENCE COUNTY**

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

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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