

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

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

Plaintiff,

vs.

C. A. No. PC 15-_____

NORBERT MONGEON, SR.,
In his capacity as President of
MONGEON REALTY, INC.
Defendant.

**VERIFIED COMPLAINT AND
PETITION TO ENFORCE A FINAL COMPLIANCE ORDER**

A. INTRODUCTION

1. This matter arises as a result of Defendant’s violations of the *RULES AND REGULATIONS ESTABLISHING MINIMUM STANDARDS RELATING TO LOCATION, DESIGN, CONSTRUCTION AND MAINTENANCE OF ONSITE WASTEWATER TREATMENT SYSTEMS, as amended*, (the “OWTS Regulations”) and Defendant’s failure to appeal a Notice of Violation (“NOV”) issued by the Rhode Island Department of Environmental Management (“RIDEM”). The NOV relates to the failure of an Onsite Wastewater Treatment System (“OWTS”) at the subject property.

B. PARTIES

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

3. Defendant, Norbert Mongeon, Sr., is a Rhode Island resident living at 781 Iron Mine Road, in the Town of North Smithfield, Rhode Island.

4. Mongeon Realty, Incorporated, was a duly organized corporation within the State of Rhode Island, having its principal place of business at 781 Iron Mine Road, in the Town of

North Smithfield, Rhode Island and the President of said corporation is listed as Norbert Mongeon, Sr. Currently, said corporation is inactive having it's Certification revoked by the State of Rhode Island, on or about October 20, 2008.

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 7 Sayles Hill Road in the Town of North Smithfield, Rhode Island, and is also identified by the North Smithfield as Assessor Plat 17, Lot 132.

9. The Property includes a dwelling assessed by the Town of North Smithfield as single family residence with three bedrooms and one and half bathrooms.

10. The Defendant, Mongeon Realty, Inc., owns the Property, and Norbert Mongeon, Sr. is listed as the President of said corporation.

11. On May 28, 2010, the Department issued a NOV alleging violations of the OWTS Regulations for, 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 Defendant 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 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.
- (d) Pay an administrative penalty of one thousand four hundred (\$1,400.00) 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 formal application and plan to repair the OWTS has been submitted to RIDEM and the administrative penalty of one thousand four hundred (\$1,400.00) dollars 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. A Department inspection of the property on December 16, 2014, revealed continued evidence of a failing OWTS by the presence of sewage odors and black soil.

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 Defendant by RIDEM on May 28, 2010 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 May 28, 2010 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. 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 in to a Final Compliance Order of the Department.

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 Defendant has failed to comply with the provisions of the Final Compliance Order in that he has failed to have the OWTS pumped as necessary to prevent sewage from the OWTS from overflowing onto the surface of the ground; the Defendant has failed to submit to RIDEM a formal application and plan to repair the OWTS and have not repaired the OWTS nor 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 Defendant 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 repair plan application, certified by a licensed On-site Wastewater Treatment System designer, for the OWTS at the Property. 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. Defendant 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 ensure that the Property is vacant 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 North Smithfield 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 One Thousand Four Hundred (\$1,400.00) Dollars to the Plaintiff which is the amount of the administrative penalty assessed in the NOV of May 28, 2010; 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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