

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 14-_____

LYLE G. MONROE,
SHIRLEY M. MONROE and
WANDA B. MONROE

Defendants.

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

A. INTRODUCTION

1. This matter arises as a result of Defendants’ 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 Defendants’ failure to comply with a Consent Agreement entered into by the Defendants, Lyle and Shirley Monroe, following the issuance of a Notice of Violation and Order (“NOV”) by the Director of the Rhode Island Department of Environmental Management (the “Department”). 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, Lyle G. Monroe, is a Rhode Island resident living at 581 Trimtown

Road in the Town of Scituate, Rhode Island.

4. Defendant, Shirley M. Monroe, is a Rhode Island resident living at 581 Trimtown

Road in the Town of Scituate, Rhode Island.

5. Defendant, Wanda B. Monroe, is a Rhode Island resident living at 581 Trimtown

Road in the Town of Scituate, Rhode Island.

C. JURISDICTION & VENUE

6. 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).

7. Personal jurisdiction over the Defendants in this case is properly conferred in this Court based on Defendants' presence within the State of Rhode Island.

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

D. FACTS

9. The subject property (the "Property") is located at 581 Trimtown Road in the Town of Scituate of, Rhode Island, and is also identified by the Scituate Assessor Plat 42, Lot 42.

10. The Property includes a dwelling assessed by the Town of Scituate as a six-bedroom, single family residence.

11. The Defendants own the Property.

12. On March 3, 2008, the Department issued a Notice of Violation ("NOV") alleging violations of the OWTS Regulations for, the use of a failed OWTS, discharge of sewage to the surface of the ground, and requiring the repair of an OWTS when any component has failed. *See* NOV, attached hereto as "Exhibit 1."

13. After the Defendants, Lyle and Shirley Monroe, requested an administrative hearing, the parties resolved the matter through the execution of a Consent Agreement on October 22, 2008. *See* Consent Agreement, attached hereto as “Exhibit 2.”

14. The Consent Agreement included the following requirements:

- a. [Defendants] shall 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 the satisfaction of RIDEM; and
- b. [Defendants] shall discontinue all use of the washing machine at the Property until the OWTS is repaired to the satisfaction of RIDEM; and
- c. [Defendants] shall limit the occupancy of the dwelling to no more than two (2) person until the OWTS is repaired to the satisfaction of RIDEM; and

15. A Department inspection at the Property on June 11, 2014, revealed that the Defendants had: (a) evidence that the septic system located at the property had discharged sewage to the surface of the ground; and (b) overflows of sewage from the septic system were apparent on the surface of the ground. *See* Inspection Report, dated June 11, 2014 and attached hereto as “Exhibit 3.”

16. Pursuant to the terms of the Consent Agreement, the “Agreement shall have the full force and effect of a final administrative order pursuant to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.* from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws § 42-17.1-2[(21)(v)].”

17. As of the date of this Complaint, Defendants have failed to comply with the terms of the Consent Agreement.

18. Such non-compliance by the Defendants 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.

19. The NOV issued to the Defendants by RIDEM on March 3, 2008 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 March 3, 2008 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 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.

21. Defendants, by entering into the Consent Agreement, are deemed to have waived their rights to an adjudicatory hearing and resulting in the Consent Agreement automatically transforming in to a Final Compliance Order of the Department.

22. 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.

23. As of the date of filing this Complaint, Defendants have failed to comply with the provisions of the Final Compliance Order in that they have failed to prevent any and all sanitary sewage from overflowing on the Property, they have failed to discontinue the use of a washing machine at the Property and failed to limit occupancy of the property to two (2) persons.

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) Preliminary and Permanent Injunctive Relief, ordering Defendants to immediately cease and desist the use of the washing machine at the Property;
- (c) Permanent Injunctive Relief, ordering Defendants to vacate the Property within thirty (30) days and to keep the Property vacant until such time that the Property can either be: (a) connected to the Town of Scituate sewerage system; or (b) repair the OWTS to the satisfaction of RIDEM; and
- (d) 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: May ____, 2015.

**STATE OF RHODE ISLAND
PROVIDENCE COUNTY**

Subscribed and sworn to before me this ____ day of May, 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
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