

**SUPERIOR COURT**

Defendant.

[illegible]

**C.A. No. PC 16-\_\_\_\_\_**

7. A dam identified as Bowdish Lower Dam, State Identification Number 727 (the “Dam”) is located on the Property and is classified as High Hazard.
8. On or about October 19, 2009, the Department caused the Dam to be inspected. The Inspection revealed vegetation on the upstream and downstream side of the Dam that precluded a proper inspection; debris obstructing the flow in the spillway; and unknown operability of the low level gate.
9. Thereafter, on or about December 6, 2011, the Department sent the Defendant a Notice of Hazard Classification and Registration Form, which was delivered on or about December 12, 2011.
10. On or about April 9, 2012, the Department issued a Notice of Violation (the “NOV”) to the Defendant for:
  - a. Violation of DEM’s Rules and Regulations for Dam Safety (the “Dam Safety Regulations”), Rule 4A, which requires the owner of a high hazard dam to maintain the dam in a safe condition; and
  - b. Violation of DEM’s Dam Safety Regulations, Rule 8, which requires the owner of a dam to provide a fully completed registration form to DEM.
11. On or about April 12, 2012, the NOV was delivered to Defendant.
12. Among other terms, the NOV required the Defendant to:
  - a. Complete and submit the dam registration form to DEM within fourteen (14) days of receipt of the NOV;
  - b. Within fourteen (14) days of receipt of the NOV, complete and submit to DEM the enclosed registration form;
  - c. Within ninety (90) days of receipt of the NOV, cut or remove the vegetation from the embankment of Dam 727 in accordance with the Dam Safety Regulations, Rule 10A. Cutting or removal shall be in sufficient amounts to allow a thorough visual inspection to be performed. DEM shall be notified upon commencement and completion of this work;
  - d. Within ninety (90) days of receipt of the NOV, remove the debris obstructing the flow in the spillway; and
  - e. Within one hundred eighty (180) days of receipt of the NOV, retain a professional engineer fully registered in the State of Rhode Island, who is experienced with dam inspections, to complete a visual inspection of Dam

727 in accordance with the Dam Safety Regulations, Rule 11C and submit a report of the inspection findings to DEM. The inspection must include an evaluation of the operability of the low level gate. The report must specify any actions necessary to return the dam to a safe condition and include a schedule to complete the work. For any proposed repairs to Dam 727, the report must include an application prepared in accordance with the Dam Safety Regulations, Rule 10B.

13. After being properly served with a copy of the NOV, the Defendant timely filed a written request for an administrative hearing with the Department's Administrative Adjudication Division ("AAD") within the statutorily proscribed twenty (20) day time period.
14. An administrative hearing on the appeal of the NOV was held on December 16, 2014, at AAD.
15. On or about April 14, 2015, AAD issued a Decision and Order, which Order upheld the NOV and dismissed the Defendant's appeal.
16. The Decision and Order upholding the NOV became a Final Compliance Order (the "Order") against the Defendant on April 14, 2015.
17. Defendant did not appeal AAD's Decision and/or the Final Compliance Order. The time for the filing of any appeal has since passed and the Final Compliance Order is a non-appealable obligation of the Defendant.
18. As of the date of the filing of this Complaint, the Defendant has failed to comply with the NOV.

### **Count I**

#### *(Violation of Final Compliance Order)*

19. Plaintiff hereby restates and incorporated by reference the allegations contained in Paragraphs 1 through 18 above, as if set forth herein in their entirety.
20. The NOV issued to the Defendant on or about April 9, 2012 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), the aforementioned NOV notified the Defendant of the facts giving rise to the alleged violations; of the statutes and/or regulations violated; and of the Defendant's right to an administrative hearing before AAD.
22. The Defendant timely appealed the NOV to AAD and a hearing was conducted on December 16, 2014.

23. AAD issued the Decision and Final Compliance Order upholding the NOV and dismissing the Defendant's appeal.
24. No further appeal was ever taken, the appeal period has passed, thus, the Decision and Final Compliance Order upholding the NOV is a final and binding obligation which the Defendant has failed to comply with.
25. Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi), a Final Compliance Order that has become effective may be enforced through proceedings for injunctive relief, wherein the correctness of the compliance order shall be presumed.

### **Count II**

*(Temporary, Preliminary and Permanent Injunctive Relief)*

26. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 25 above, as if set forth herein in their entirety.
27. The Department has more than a reasonable probability of success as the NOV is a Final Compliance Order as a result of Defendant's failure to request a timely appeal of AAD's Decision and Order.
28. The Department has no other adequate remedy at law and is threatened with irreparable harm if the dam is allowed to remain in an unsafe condition.
29. The balancing of the equities, including the public interest weighs in favor of providing the Department with injunctive relief as the Dam has been classified as a High Hazard and presents a threat to human life and/or property if it were to fail.
30. Enforcing the Final Compliance Order preserves the status quo in that it mitigates the threat and danger to human life and property in the event the Dam fails.

WHEREFORE, the Plaintiff, Janet L. Coit, in her capacity as Director of the Department of Environmental Management hereby requests that this honorable Court enter judgment in the Department's favor and grant the following relief:

Temporary, Preliminary and Permanent Injunctive Relief, ordering Defendant to:

1. Within fourteen (14) days complete and submit the Dam Registration Form to the Department;
2. Immediately take all necessary actions to bring the Dam into compliance with the Department's Dam Safety Regulations by performing any and all actions required by the Department as specified in the NOV. (See Paragraph no. 12 above and the Final Compliance Order); and

3. Such other relief as this Court deems just and equitable, in accordance with the facts of this case.

Respectfully submitted:  
JANET L. COIT, in her capacity as DIRECTOR,  
Rhode Island Department of Environmental  
Management  
By her attorney:

/s/ Christina A. Hoefsmit  
Christina A. Hoefsmit, Esq. (# 8979)  
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Dated: February 2, 2016

**VERIFICATION**

I, Paul W. Guglielmino, Senior Sanitary Engineer for the Department of Environmental Management, Office of Compliance and Inspection, an authorized representative of the Director, first being duly sworn upon oath, hereby state that I have reviewed the factual allegations set forth in this Complaint and Petition for Injunctive Relief and that such factual allegations are, to the best of my knowledge and belief, true and accurate.

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Paul W. Guglielmino  
Senior Sanitary Engineer

STATE OF RHODE ISLAND  
PROVIDENCE COUNTY

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

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