

**TERRENCE GRAY,
in his capacity as Director,
RHODE ISLAND DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

Plaintiff,

vs.

C.A. No. PC 22-_____

**BARBARA P. FEDUN, as Trustee, and
THE BARBARA P. FEDUN TRUST
AGREEMENT**

Defendants

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

A. INTRODUCTION

1. This matter arises as a result of Defendants’ violations of Rhode Island General Laws and the *RULES 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” or the “Department”). The NOV relates the failure to the failure to properly abandon a cesspool located within 200 feet of the inland edge of a shoreline bordering a tidal water area.

B. PARTIES

2. Plaintiff, Terrence Gray, is the duly appointed Director of the RIDEM, whose offices are located at 235 Promenade Street, Providence, Rhode Island.

3. Defendant, Barbara P. Fedun, is the named trustee of The Barbara P. Fedun Trust Agreement (the “ Fedun Trust”) and a resident of California residing at 139 5th Avenue in San Francisco, California 94118.
4. Defendant, The Barbara P. Fedun Trust Agreement, is a trust created on or about January 30, 2017, with an address of 139 5th Avenue, San Francisco, California 94118.

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)(vi).
6. Personal jurisdiction over the Defendants is properly conferred in this Court based on Defendants’ ownership of real property 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 36 Bay Street in Westerly, Rhode Island and is also identified by the Town of Westerly as Assessor’s Plat 179, Lot 100.
9. The Property is a single-family dwelling with 2 bedrooms and one bathroom (the “Dwelling”).
10. The Defendant, Fedun Trust, owns the Property.
11. The Property was previously owned by Barbara P. Fedun and transferred to Defendant, Fedun Trust, on or about February 6, 2017.
12. On May 29, 2019, the RIDEM issued a NOV to Defendant, Fedun Trust, alleging violations of Rhode Island General Laws and the OWTS Regulations for the failure to

- properly abandon a cesspool located within 200 feet of the inland edge of a shoreline bordering a tidal water area.
13. The NOV was delivered to Defendant, Fedun Trust, care of Barbara P. Fedun as Trustee, on or about July 8, 2019 as evidenced by the United States Postal Service.
 14. The Defendant did not request an administrative hearing to contest the NOV.
 15. Among other terms, the NOV ordered the Defendants to:
 - a. To connect to public sewers, if available, within 30 days, and properly abandon the cesspool in accordance with Part 6.56 of the OWTS Regulations.
 - b. If public sewers are not available, retain a licensed on-site wastewater treatment system (“OWTS”) designer and have the licensed designer submit a formal application and plan to RIDEM to replace the cesspool in accordance with the OWTS regulations within 30 days.
 - c. Complete all work in accordance with the approval provided by RIDEM within 120 days of RIDEM’s approval of the application as evidenced by the issuance of a Certificate of Conformance issued by RIDEM.
 - d. Pay an administrative penalty of Five Thousand (\$5,000.00) Dollars.
 16. To date the Defendants have failed to properly abandon the cesspool located on the Property and to pay the administrative penalty.
 17. Because the Defendants failed to request an administrative hearing, the NOV and associated administrative penalty contained within (pursuant to R.I. Gen. Laws §§42-17.1-2(21)(vi) and 42-17.6-4(c)) automatically became a Compliance Order enforceable in Superior Court.
 18. The Property continues to be owned by the Defendant, Fedun Trust.
 19. As of the date of this Complaint, the Defendants have failed to fully comply with the

terms of the Compliance Order. Such non-compliance constitutes a serious environmental and public health hazard to the Defendants, neighbors, and the general public.

COUNT I

(Violation of a Compliance Order)

20. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 19 above.
21. The NOV issued to the Defendants by the RIDEM on May 29, 2019 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).
22. In accordance with R.I. Gen. Laws § 42-17.1-2(21)(i), the NOV issued on May 29, 2019 notified the 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.
23. 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 into a Compliance Order of the RIDEM.
24. Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi), a Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Compliance Order rests with the Defendants.
25. As of the date of filing this Complaint, the Defendants have failed to comply with the

provisions of the Compliance Order in that they have failed to properly abandon the cesspool located on the Property and pay the administrative penalty.

COUNT II

(Violation of a Compliance Order Administrative Penalties)

26. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 25 above.
27. The NOV issued to the Defendant, Fedun Trust, on May 29, 2019 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).
28. The administrative penalty assessed in the NOV issued to the Defendant, Fedun Trust, on May 29, 2019, was assessed pursuant to R.I. Gen. Laws § 42-17.6-3.
29. In accordance with R.I. Gen. Laws § 42-17.6-3(a) the aforementioned NOV notified the Defendant, Fedun Trust, and its trustee of the facts giving rise to the alleged violations; of the statutes and/or regulations violated; the amount of the assessed administrative penalty for each violation; of the Defendant's right to request an administrative hearing before the RIDEM's Administrative Adjudicatory Division by filing a request for hearing within twenty (20) days of service of the NOV and that his failure to request a hearing in the time prescribed would result in the associated administrative penalty proposed becoming final; and the manner of payment thereof.
30. Pursuant to R.I. Gen. Laws § 42-17.6-4(c) and § 42-17.1-2(21)(i) the Defendant, Fedun Trust, by failing to appeal the issuance of the NOV and the proposed administrative penalty, is deemed to have waived its rights to an adjudicatory hearing resulting in the NOV automatically transforming into a Compliance Order of the RIDEM and the proposed administrative penalty becomes final.

31. Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi), a Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Compliance Order rests with the Defendant.
32. Defendant has failed to pay the administrative penalty assessed in the May 29, 2019, NOV.
33. Each day of non-compliance represents a continuing violation of Rhode Island General Laws and the OWTS Regulations and constitutes a separate offense subject to separate administrative penalties.

WHEREFORE, Plaintiff, Terrance Gray, in his capacity as Acting 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 the Defendants to immediately vacate the Dwelling and to keep the Dwelling vacant until such time as the Defendants properly abandons the cesspool in accordance with the OWTS regulations and until a new OWTS is installed as evidenced by the issuance of a Certificate of Conformance by the RIDEM to the Defendant;
- (b) Permanent Injunctive Relief, ordering Defendants to submit to the RIDEM within thirty (30) days a written proposal for the abandonment of the cesspool and the installation of a new OWTS, that must include:
 1. Submittal of an application and plan for a new OWTS to RIDEM in accordance with the OWTS Regulations;
 2. The 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 the 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 Defendants fail to abide by the terms of paragraphs (a) and (b) and its subsections, as stated immediately above, including following the time requirements, then the Defendants are to ensure that the Dwelling remains vacant until such time that: (1) the cesspool is properly abandoned in accordance with the OWTS Regulations and (2) a new OWTS is installed to the satisfaction of the RIDEM as evidenced by the issuance of a Certificate of Conformance; and
- (d) Award of Administrative Penalty, ordering Defendants to pay the full amount of Five Thousand (\$5,000.00) Dollars to the Plaintiff which is the amount of the administrative penalty assessed in the NOV of May 29, 2019; and
- (e) Such further relief as this Court deems just and equitable in accordance with the facts of this case.

VERIFICATION

I, Stephen Tyrrell, Supervising Environmental Scientist 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, true and accurate.

For the Director,

By: _____
STEPHEN TYRRELL
Supervising Environmental Scientist
Office of Compliance and Inspection
Dated: May __, 2022.

**STATE OF RHODE ISLAND
PROVIDENCE COUNTY**

Subscribed and sworn to before me this __ day of May, 2022.

NOTARY PUBLIC
My commission expires:

Submitted by:
Terrence Gray,
in his capacity as Director,
RHODE ISLAND DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By his attorney,

/s/ Tricia Quest

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