

02908.

(2) Defendant, Earle's Service Station, Inc., is a duly organized corporation authorized to do business in the State of Rhode Island with its principal place of business at 35 Meeting House Road in Little Compton, Rhode Island.

JURISDICTION & VENUE

(3) Subject matter jurisdiction in this case is properly conferred in this Court pursuant to R.I. Gen. Laws § 42-17.1-2(21)(v), as amended, and R.I. Gen. Laws § 8-2-13, as amended.

(4) Personal jurisdiction over the Defendant in this case is properly conferred in this Court based upon Defendant's, operation and ownership of real property located within the State of Rhode Island.

(5) Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 42-17.1-2(21)(v) and R.I. Gen. Laws § 9-4-3, as amended.

FACTS

(6) According to the Town of Little Compton land evidence records, Earle's Service Station, Inc., is the owner of record for the subject property which is identified as Town of Little Compton Assessor's Plat 20, Lot 14, and is located at 35 Meeting House Lane in the Town of Little Compton, Rhode Island (the "Property").

(7) The Property includes a motor fuel filling station and two underground storage tanks ("USTs" or "tanks") which are used for storage of petroleum products (the "Facility").

(8) The Facility is registered with the Department pursuant to Section 6.00 of the Department's *Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations") as UST Facility #02650.

(9) The USTs are registered with DEM as follows:

<u>UST ID No.</u>	<u>Date Installed</u>	<u>Capacity</u>	<u>Substance Stored</u>
002	June 15, 1987	4,000 gallons	Gasoline
003	June 15, 1987	4,000 gallons	Gasoline

- (10) The USTs are subject to the UST Regulations.
- (11) The Defendant is the owner of the Property.
- (12) The Defendant is the operator of the Facility.
- (13) On or about March 6, 2014 the Department inspected the Facility.
- (14) On or about March 7, 2014 the Department issued a Notice of Intent to Enforce to the Defendant based upon the March 6, 2014 inspection. Said Notice of Intent to Enforce stated seven violations that were found during the March 6, 2014 inspection and gave the Defendant sixty (60) days to take remedial measure to cure said violations.
- (15) The Defendant did not cure said violations.
- (16) On or about July 2, 2014 the Department issued a NOV to the Defendant alleging violations of the UST Regulations for not complying with:
- (a) Rule 8.08(B)(2) of the UST Regulations, requiring that an automatic tank gauging system (“ATG”) be utilized to perform at least one 0.2-gallon per hour leak test per month for single-walled USTs.
 - (b) Rule 8.08(B)(3) and 11.03 of the UST Regulations, requiring monthly inventory reconciliation and leak checks for UST systems.
 - (c) Rule 8.15(E) of the UST Regulations, requiring monthly testing of UST continuous monitoring systems by the owner/operator to ensure effective operation.
 - (d) Rule 8.16(A)(1) of the UST Regulations, pertaining to the maintenance of spill containment basins.

(e) Rule 8.22 of the UST Regulations, requiring all regulated UST facility owners/operators to have trained and certified UST facility operators assigned to their facility and on duty at the facility during all operating hours.

(f) Rule 8.22(A)(7) of the UST Regulations, requiring UST owners/operators to maintain a list of all of the Class C UST facility operators assigned to their facility.

(g) Rule 8.22(F) of the UST Regulations, requiring the registered Class A or Class B UST facility operator to conduct monthly on-site UST facility inspections and record the results of those inspections on the requisite form.

(17) The NOV ordered the Defendant within sixty (60) days to:

(a) Use the ATG to perform 0.2-gallon per hour leak tests for the USTs at least once every 30 days and maintain records of such in accordance with Rules 8.08(B)(2) and 11.02(B)(2) of the DEM's UST Regulations. Written verification of a return to compliance shall be submitted to the DEM-Office of Compliance and Inspection (the "OC&I");

(b) Submit to the OC&I written verification that you are now complying with the inventory control record keeping requirements for the USTs in accordance with Rules 8.08(B)(3) and 11.03 of the DEM's UST Regulations;

(c) Test the CMS on a monthly basis in accordance with Rules 8.15(E) and 8.22(F) of the DEM's UST Regulations and document the results of those inspections in accordance with Rules 8.22(F) and 11.02(B)(3) of the DEM's UST Regulations. Written verification of a return to compliance shall be submitted to the OC&I;

(d) Evacuate and clean the spill containment basin for UST No. 002. All wastes removed from the basin shall be managed and disposed of in accordance with Rule 5.8 of the DEM's *Rules and Regulations for Hazardous Waste Management*. Written or photographic verification of compliance shall be submitted to the OC&I;

(e) Operate the Facility only in the presence of at least one trained and certified Class A, Class B or Class C UST facility operator in accordance with Rule 8.22 of the DEM's UST Regulations;

(f) Submit to the OC&I written verification that at least one trained Class C UST

facility operator is assigned to the Facility in accordance with Rule 8.22 of the DEM's UST Regulations. A written list of all the Class C UST facility operators trained and assigned to the Facility shall be compiled and maintained at the Facility in accordance with Rule 8.22(A)(\&) of the DEM's UST Regulations;

(g) Submit to the OC&I written verification that the registered Class A/B UST Facility operator is now performing monthly on-site UST Facility inspections and recording the results of those inspections on the requisite form in accordance with Rule 8.22(F) of the DEM's UST Regulations;

(h) Pay the administrative penalty of Nine Thousand Two Hundred and Fifty (\$9,250.00) Dollars.

(18) The Defendant did not request an administrative hearing.

(19) The NOV and associated administrative penalties contained within (pursuant to *R.I. Gen. Laws* §§ 42-17.1.2(21)(vi) and 42-17.6-4(b)) automatically became a Final Compliance Order enforceable in Superior Court.

(20) The Property continues to be owned and operated by the Defendant.

(21) Since the NOV was issued and became a Final Compliance Order, the Defendant has failed to comply with the terms of the Order and the terms of the NOV.

(22) The Defendant's failure to comply with the NOV represents a continuing violation of the Department's UST Regulations.

(23) As of the date of the filing of this Complaint, the Defendant has failed to perform any Orders of the Final Compliance Order or NOV.

COUNT I

(Violation of Final Compliance Order)

(24) Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 25 above.

(25) The NOV issued to the Defendant on or about July 2, 2014 was issued pursuant to R.I.

Gen. Laws § 42-17.1-2(21).

(26) 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 request an administrative hearing before DEM's Administrative Adjudicatory Division by filing a request for hearing within twenty (20) days of service of the NOV.

(27) Defendant, by failing to appeal the issuance of the NOV, is deemed to have waived his rights to an adjudicatory hearing resulting in the NOV automatically transforming in to a Final Compliance Order of the Department.

(28) 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.

(29) Defendant has failed or refused to comply with the requirements of the NOV by performing the actions required.

(30) Each day on non-compliance represents a continuing violation of the Department's UST Regulations.

COUNT 2

(Violation of Final Compliance Order Administrative Penalties)

(31) Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 25 above.

(32) The NOV issued to the Defendant on or about July 2, 2014 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

(33) The Administrative Penalties assessed in the NOV issued to the Defendant on or about

July 2, 2014, were accessed pursuant to R.I. Gen. Laws §42-17.6-3.

(34) In accordance with R.I. Gen. Laws § 42-17.6-3(a), the aforementioned NOV notified the Defendant 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 DEM's Administrative Adjudicatory Division by filing a request for hearing within twenty (20) days of service of the NOV and that their failure to request a hearing in the time proscribed would result in the associated administrative penalty proposed becoming final; and the manner of payment thereof.

(35) Pursuant to R.I. Gen. Laws §42-17.6-4(b) and §42-17.1-2(21)(i) Defendant, 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 in to a Final Compliance Order of the Department and the proposed administrative penalty became final.

(36) 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.

(37) Defendant has failed or refused to comply with the administrative penalties assessed with the July 2, 2014 NOV.

(38) Each day on non-compliance represents a continuing violation of the Department's UST Regulations and constitute a separate offense subject to separate administrative penalties.

RELIEF REQUESTED

WHEREFORE, the Plaintiff, Janet L. Coit, in her capacity as Director of the Department,

hereby requests that this honorable Court enter judgment in the Department's favor and grant the following relief:

- 1) Temporary, Preliminary and Permanent Injunctive Relief, ordering Defendants to:
 - A. Immediately take all necessary actions to bring the Property into compliance with the UST Regulations by performing any and all actions required by the Department as specified in the NOV within sixty days (60) days:
 1. Use the ATG to perform 0.2-gallon per hour leak tests for the USTs at least once every thirty (30) days and maintain records of such in accordance with Rules 8.08(B)(2) and 11.02(B)(2) of the DEM's UST Regulations. Written verification of a return to compliance shall be submitted to the DEM-Office of Compliance and Inspection (the "OC&I");
 2. Submit to the OC&I written verification that you are now complying with the inventory control record keeping requirements for the USTs in accordance with Rules 8.08(B)(3) and 11.03 of the DEM's UST Regulations;
 3. Test the CMS on a monthly basis in accordance with Rules 8.15(E) and 8.22(F) of the DEM's UST Regulations and document the results of those inspections in accordance with Rules 8.22(F) and 11.02(B)(3) of the DEM's UST Regulations. Written verification of a return to compliance shall be submitted to the OC&I;
 4. Evacuate and clean the spill containment basin for UST No. 002. All wastes removed from the basin shall be managed and disposed of in accordance with Rule 5.8 of the DEM's *Rules and Regulations for Hazardous Waste Management*. Written or photographic verification of compliance shall be submitted to the OC&I;
 5. Operate the Facility only in the presence of at least one trained and certified Class A, Class B or Class C UST facility operator in accordance with Rule 8.22 of the DEM's UST Regulations;
 6. Submit to the OC&I written verification that at least one trained Class C UST facility operator is assigned to the Facility in accordance with Rule 8.22 of the DEM's UST Regulations. A written list of all the Class C UST facility operators trained and assigned to the Facility shall be compiled and maintained at the Facility in accordance with Rule 8.22(A)(&) of the DEM's UST Regulations;

7. Submit to the OC&I written verification that the registered Class A/B UST Facility operator is now performing monthly on-site UST Facility inspections and recording the results of those inspections on the requisite form in accordance with Rule 8.22(F) of the DEM's UST Regulations;
- 2) If Defendant fails to abide by the terms of paragraph A, as stated above within sixty (60) days, then the Defendant shall be restrained and enjoined from operating any business on the Property until such time as he is in compliance with the UST Regulations as stated above;
- 3) Within thirty (30) days, remit to the Department the administrative penalty of Nine Thousand Two Hundred and Fifty (\$9,250.00) Dollars as set forth in the NOV; and
- 4) Such other relief as this Court deems just and equitable in accordance with the facts of this case.

VERIFICATION

I, Tracey D'Amadio Tyrrell, Supervising Environmental Scientist, Department of Environmental Management, Office of Compliance & Inspection, first being duly sworn upon oath, hereby state that to the best of my knowledge and belief, the facts contained in this Complaint and the exhibits attached hereto are, true and accurate.

Name: Tracey D'Amadio Tyrrell
Title: Supervising Environmental Scientist

**STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE**

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

Notary Public
My commission expires:

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

Dated: March _____, 2016

/s/Tricia Quest
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