

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-_____

GERALD HACKETT and :
STANLEY BUS, LLC :
Defendant :

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

Statement of the Case

This matter arises as a result of Defendants’ violations of the Rhode Island Department of Environmental Management’s (the “Department”) *Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”). This matter seeks to enforce a final compliance order in accordance with R.I. Gen. Laws § 42-17.1-2(21)(v). The compliance order in question became final and effective as a result of Defendants’ failure to request a hearing before the Department’s Administrative Adjudication Division. Plaintiff seeks the enforcement of the original Notice of Violation and Order (the “NOV”) as a final compliance order, including, but not limited to, compliance with the UST Regulations and the payment of all administrative penalties as set forth therein.

PARTIES

(1) Plaintiff, Janet L. Coit, is the duly appointed Director (“Director”) of the Rhode Island Department of Environmental Management (the “Department”), a duly-authorized agency of the State of Rhode Island, having offices located at 235 Promenade Street, Providence, Rhode Island,

02908.

(2) Defendant, Stanley Bus, LLC, is a duly organized corporation authorized to do business in the State of Rhode Island.

(3) Defendant, Gerald Hackett, is a resident of the State of Rhode Island with an address of 20 Wheelock Avenue, Cranston, Rhode Island 02920.

JURISDICTION & VENUE

(4) 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.

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

(6) 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

(7) According to the City of Cranston land evidence records, Stanley Bus, LLC is the owner of record for the subject property (the "Property") which is identified as City of Cranston Assessor's Map/Plat 15/2, Lot 74, and is located at 908 Oaklawn Avenue in the City of Cranston, Rhode Island.

(8) Stanley Bus, LLC, Certificate of Organization/Registration from the State of Rhode Island Secretary of State at the time the NOV was issued had been revoked; however its status was reinstated as of May 8, 2015.

(9) Gerald Hackett is the current and past owner/president of Stanley Bus, LLC.

(10) The Property includes a service station, a motor fuel filling station and underground storage tanks (the “Facility”).

(11) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks are used for storage of petroleum products and which are subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).

(12) The Facility is registered with the Department as UST Facility # 00788.

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

<u>UST ID No.</u>	<u>Capacity</u>	<u>Product Stored</u>
002	12,000 gallons	Gasoline
004	12,000 gallons	Gasoline
006	12,000 gallons	Gasoline
009	1,000 gallons	Used Oil
011	1,000 gallons	Heating Oil

(14) On or about March 8, 2013, the Department issued a letter by regular mail to all registered UST owner/operators that required the owners/operators to inspect their facility and complete and submit to the Department a Compliance Certification Checklist, a Certification Statement form and any necessary Return to Compliance Plans (the “Compliance Certification Forms”) by June 30, 2013.

(15) On or about July 10, 2013, the Department sent a second letter by regular mail to all non-compliant registered UST owners/operators requiring the owners/operators to complete the Compliance Certification Forms by July 31, 2013.

(16) On November 14, 2013 the Department issued a Notice of Intent to Enforce (“NIE”) to the Defendants by certified mail. The NIE required the Defendants to inspect the Facility and complete and submit the Compliance Certification Forms to the Department within fifteen (15)

days of receipt of the NIE.

(17) The NIE was delivered to Madeline Hackett, (who is listed on the Town of Cranston Tax Assessor Website as an owner of the property, however the last recorded deed for the property on March 9, 2007, shows the property transferred to Stanley Bus, LLC) on November 16, 2013 and to Gerald Hackett on November 25, 2013.

(18) On April 15, 2014, the Department issued a NOV alleging violations of the UST Regulations for, not inspecting their facility and completing and submitting the Compliance Certifications Forms within the specified time frame to DEM, and for not submitting a *Certified UST Facility Operators Registration Form* to DEM to verify that trained and certified UST facility operators were assigned to the Facility by August 1, 2012 and on duty at the facility during all operating hours.

(19) The Defendants did not request an administrative hearing to contest the NOV.

(20) The NOV required the Defendants within sixty (60) days to:

- (a) Submit the Compliance Certification Forms to the DEM's Office of Compliance and Inspection ("OC&I") at 235 Promenade Street, Suite 220, Providence, RI 02908 in accordance with Rule 8.03 of the DEM's UST Regulations;
- (b) Assign at least one trained and certified Class A UST facility operator and at least one trained and certified Class B UST facility operator to the Facility in accordance with Rule 8.22 of the DEM's UST Regulations. Written verification of compliance shall be submitted to OC&I;
- (c) Train all Facility employees as (at least) Class C UST facility operators and compile a written list of Class C UST facility operators that have been trained and assigned to the Facility, as per Rules 8.22(A) and (D) of the DEM's UST Regulations. Written verification of compliance shall be submitted to OC&I;
- (d) Complete a *Certified UST Facility Operators Registration Form* in accordance with Rule 8.22(A)(4) of the DEM's UST Regulations and submit the form to the DEM-Office of Waste Management at 235 Promenade Street, Suite 380, Providence, RI 02908 along with copies of the Class A and Class B UST facility operators' examination certificates. Copies of the form and certificates shall also

be submitted to OC&I;

(e) Pay the administrative penalty of eight thousand (\$8,000.00) dollars.

(21) 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.

(22) The Property continues to be owned by the Defendants, Madeline Hackett and the owner of Stanley Bus, LLC.

(23) Since the NOV was issued and became a final compliance order, the Defendants have failed to comply with the Order and the terms of the NOV.

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

(25) As of the date of the filing of this Complaint, the Defendants have failed to: (a) comply with the NOV; (b) comply with the Final Compliance Order; and (c) pay the administrative penalty of eight thousand (\$8,000.00) dollars as required by the NOV and the Final Compliance Order.

COUNT I

(Violation of Final Compliance Order)

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

(27) The NOV issued to the Defendants on or about April 15, 2014 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

(28) In accordance with R.I. Gen. Laws § 42-17.1-2(21), the aforementioned NOV notified the Defendants of the facts giving rise to the alleged violations; of the statutes and/or regulations

violated; and of the Defendants' 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.

(29) Defendants, by failing to appeal the issuance of the NOV, are deemed to have waived their rights to an adjudicatory hearing resulting in the NOV automatically transforming in to a Final Compliance Order of the Department.

(30) Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(v), 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 and the party attacking the compliance order shall bear the burden of proof.

(31) Defendants have failed or refused to comply with the requirements of the NOV by performing the actions required and paying the administrative penalty as required.

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

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:

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 (See Paragraph no. 15 above);
- B. If Defendants fail to abide by the terms of paragraph A, as stated above within sixty (60) days, then the Defendants shall be restrained and enjoined from

operating any business on the Property until such time as they are in compliance with the UST Regulations as stated above;

- C. Within thirty (30) days, remit to the Department the administrative penalty of Eight Thousand (\$8,000.00) Dollars as set forth in the NOV; and
- D. 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 August, 2015.

 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: August ____, 2015

/s/Tricia Quest
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