

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 16-

5 STARS MANAGEMENT
SERVICES, LLC; JOSEPHINE
NAJM, In her capacity as Manager of,
5 STARS SERVICES, LLC; JOHNSTON:
GAS, INC.; and JOSEPH NAJM, In his
Capacity as President of JOHNSTON
GAS, INC.

Defendants

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

Statement of the Case

This matter arises as a result of Defendant’s ownership and/or operation of certain property in which violations of the Rhode Island Department of Environmental Management’s (the “Department” or “DEM”) *Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”) have occurred and continue to occur. 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 the property owner and/or operator’s 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, a duly-authorized agency of the State of Rhode Island, having offices located at 235 Promenade Street, Providence, Rhode Island, 02908.

(2) Defendant, 5 Stars Management Services, LLC, is duly organized and authorized to do business in the State of Rhode Island with its principal place of business at 1209 Hartford Avenue, in the Town of Johnston, Rhode Island.

(3) Josephine Najm is a resident of the State of Rhode Island with a residence of 735 Central Avenue, in the Town of Johnston, Rhode Island.

(4) Johnston Gas, Inc. is a duly organized corporation authorized to do business in the State of Rhode Island with its principal place of business at 1209 Hartford Avenue in the Town of Johnston, Rhode Island.

(5) Joseph Najm is a residence of the State of Rhode Island with a residence of 735 Central Avenue, in the Town of Johnston, Rhode Island.

JURISDICTION & VENUE

(6) 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.

(7) Personal jurisdiction over the Defendants in this case are properly conferred in this Court based upon the Defendants’ operation and ownership of real property located within the State of Rhode Island.

(8) 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

(9) According to the Town of Johnston land evidence records, 5 Stars Management Services, LLC is the owner of record for the subject property which is identified as Town of Johnston Assessor's Plat 20, Lot 32, and is located at 1209 Hartford Avenue in the Town of Johnston, Rhode Island (the "Property").

(10) 5 Stars Management Services, LLC took title to the Property on December 2, 2013.

(11) The Property was previously owned by Joseph and Josephine Najm.

(12) Josephine Najm is the current manager for 5 Stars Management Services.

(13) Johnston Gas, Incorporated currently operates the Facility.

(14) Joseph Najm is the President of Johnston Gas, Inc.

(15) The Property is a motor fueling station with two underground storage tanks ("USTs" or "tanks") which are used for storage of petroleum products (the "Facility").

(16) 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 #01679.

(17) The USTs were registered with DEM as follows:

<u>UST ID No.</u>	<u>Date Installed</u>	<u>Capacity</u>	<u>Substance Stored</u>
005	December 29, 1998	10,000 gallons	Gasoline
006	December 29, 1998	6,000 gallons	Gasoline

(18) On or about January 7, 2002, The Department notified Joseph Najm, Johnston Gas that based upon a Site Investigation completed by Geisser on behalf of Joseph Najm, quarterly sampling of groundwater in its wells and that the wells be gauged and groundwater flow direction be calculated each quarter.

(19) DEM did not receive any samples.

(20) On or about January 22, 2007 correspondence was sent to Joseph Najm, Johnston Gas regarding the failure to perform the quarterly sampling and that said sampling and results must take place in the next forty-five (45) days.

(21) On or about August 16, 2007, the Department sent correspondence to Joseph Najm, Johnston Gas regarding the samples that were taken and submitted to the Department, and required that samples be taken from two wells during the next high water table season (March or April 2008) and those results be submitted to the Department.

(22) On or about November 12, 2010, the Department sent correspondence to Joseph Najm, Johnston Gas, requiring that samples be taken and the analytical results for the two monitoring wells on either side of the pump island be submitted to the Department, said samples to be taken during the next wet season (March or April 2011).

(23) On or about June 18, 2013, the Department sent correspondence to Joseph Najm, Johnston Gas, advising that groundwater monitoring is a regulatory requirement and that the site is non-compliant; quarterly sampling of the groundwater was to be received by August 18, 2013 and was to continue until notified otherwise by the Department.

(24) The Department received no response regarding groundwater testing.

(25) On or about September 29, 2014 the Department issued a NOV to Johnston Gas, Inc, Joseph Najm and Johsephine Najm alleging violations of the UST Regulations for not complying

with:

- (a) Rule 8.08(A)(2) and 11.03 of the UST Regulations, requiring monthly inventory reconciliation and leak checks for UST systems;
- (b) Rule 8.22(F) of the UST Regulations, requiring a Class A or Class B UST facility operators to perform monthly inspections of their facilities;
- (c) Rule 12.02 and 12.03 of the UST Regulations, requiring UST owners/operators to investigate leaks or releases from UST systems in accordance with DEM's requirements.

(26) The NOV ordered:

- (a) By September 30, 2014 and continuing each quarter thereafter, submit the Quarterly Reports to DEM-Office of Waste Management;
- (b) Within sixty (60) days of receipt of the NOV, submit to DEM-Office of Compliance and Inspection written verification that you are now in full compliance with the inventory reconciliation and leak check requirements for the USTs, which are set forth in Rules 8.08(A)(2), 11.02(B)(5) and 11.03 of the DEM's UST Regulations;
- (c) The designated Class A/B UST facility operator shall henceforth inspect the Facility on a monthly basis in accordance with Rule 8.22(F) of the DEM's UST Regulations and document the results of those inspections on the requisite form in accordance with Rule 8.22(F) and 11.02(B)(4) of DEM's UST Regulations;
- (d) Pay the administrative penalty of Eight Thousand Seven Hundred and Fifty (\$8,750.00) Dollars.

(27) The NOV was recorded in the Land Evidence Records for the Town of Johnston on October 6, 2014.

(28) No request for an administrative hearing was made.

(29) 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.

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

(31) As of the date of the filing of this Complaint, the Defendants have failed to perform all Orders of the Final Compliance Order or NOV.

COUNT I

(Violation of Final Compliance Order)

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

(33) The NOV issued on or about September 29, 2014 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

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

(35) By failing to appeal the issuance of the NOV, one 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.

(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 Defendants.

(37) The Defendants have failed or refused to comply with all the Orders of the NOV by performing the actions required.

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

COUNT 2

(Violation of Final Compliance Order Administrative Penalties)

(39) Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 38 above.

(40) The NOV issued on or about September 29, 2014 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

(41) The Administrative Penalties assessed in the NOV on or about September 29, 2014, were assessed pursuant to R.I. Gen. Laws §42-17.6-3.

(42) In accordance with R.I. Gen. Laws § 42-17.6-3(a), the aforementioned NOV stated 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 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 the failure to request a hearing in the time proscribed would result in the associated proposed administrative penalty becoming final; and the manner of payment thereof.

(43) Pursuant to R.I. Gen. Laws §42-17.6-4(b) and §42-17.1-2(21)(i), by failing to appeal the issuance of the NOV and the proposed administrative penalty, one is deemed to have waived its right 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.

(44) 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.

(45) Defendant has failed or refused to comply with the administrative penalties assessed in the September 29, 2014 NOV.

(46) 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:
 - a) Within fifteen (15) days submit to DEM written verification that the owners/operators are complying with the monthly inventory reconciliation and leak check requirements as set forth in Rules 8.08(A)(2) and 11.03 of the UST Regulations, by providing the last six (6) months of documentation;
 - b) Within fifteen (15) days, submit written verification that Joseph Najm (the registered Class A/B UST facility operator) is performing monthly inspections of the Facility in accordance with Rule 8.22(F) of the UST Regulations and documenting the results on the requisite checklist, by providing the last six (6) months of said documentation;
 - c) Within thirty (30) days retain the services of qualified environmental consultant to resume quarterly groundwater monitoring (utilizing the existing groundwater monitoring wells), the initial sampling and laboratory analytical report to be submitted to DEM within forty-five (45) days and the laboratory analysis of the groundwater samples should be pursuant to the Environmental Protection Agency *Method 8260*;

- 2) If Defendants fails to abide by the terms of paragraph A, as stated above within the time frame specified, then the Defendant shall be restrained and enjoined from operating any business on the Property until such time as it is in compliance with the UST Regulations as stated above;
- 3) Within thirty (30) days, remit to the Department the administrative penalty of Eight Thousand Seven hundred and Fifty (\$8,750.00) 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 April, 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: April ____, 2016

/s/Tricia Quest
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