

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 13-3540

DIB TANNOUS, :  
d/b/a “MAGIC REALTY, LLC”, and :  
MAGIC GAS, INC. :  
:  
**Defendants.** :

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

Statement of the Case

This matter arises as a result of the Defendant’s violations of the Rhode Island Pollution Control Act, R.I. Gen. Laws § 46-12-1, et seq., and the Rhode Island Department of Environmental Management’s (the “Department”) *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials*, June 2005 (the “2005 UST Regulations”). This matter seeks the enforcement of 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 Defendant’s failure to timely request an administrative hearing in response to a Notice of Violation and Order issued by the Department pursuant to its authority under R.I. Gen. Laws § 42-17.1-2(21)(i). Plaintiff seeks an Order from this honorable Court enforcing the Notice of Violation and Order (the “NOV”) as a final compliance order, including, but not limited to, the completion of compliance items as required in the NOV and the payment of all administrative penalties set forth therein.

## PARTIES

- (1) Plaintiff, Janet L. Coit, is the duly appointed Director (“Director”) of 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, Dib Tannous, is a resident of 6 City View Circle, North Providence, Rhode Island and is the current owner (d/b/a/ “Magic Realty, LLC”) and former operator of the premises at 1885 Mineral Spring Avenue in the Town of North Providence, Rhode Island (also referred to as Assessor’s Plat 21A, Lot 853 in the Land Evidence Records for the Town of North Providence, Rhode Island and hereinafter referred to as the “Property”).
- (3) Defendant, Magic Gas, Inc., is a Rhode Island limited liability company with a principal place of business at 1885 Mineral Spring Avenue, North Providence, Rhode Island, and is the current operator of the Property.

## 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 Land Evidence Records for the Town of North Providence, Magic Realty, LLC is listed as the owner of the Property.

- (8) The corporate charter for Magic Realty, LLC was revoked by the Secretary of State on October 3, 2006.
- (9) Dib Tannous continues to maintain and pay municipal property taxes for the Property, doing business as “Magic Realty, LLC.”
- (10) The Property is currently operated as an automobile service station (the “Facility”).
- (11) The Facility is identified by the Department as UST Facility # 00317.
- (12) On April 17, 2006, the Department issued a Notice of Violation (“NOV”) to Magic Realty, LLC and Dib Tannous. *See* NOV, attached hereto as “Exhibit 1.”
- (13) Although Magic Gas, Inc. was a former operator of the Property, it was not in existence at the time of the issuance of the NOV, due to the fact that its corporate charter was revoked by the Secretary of State on October 7, 2005.
- (14) The corporate charter for Magic Gas, Inc. was reinstated on December 28, 2007.
- (15) The 2006 NOV related to compliance issues at the Facility and required the Defendants to take the following actions:
  - (a) Within sixty (60) days of receipt of the NOV, submit the following:
    - (i) *A Transfer of Certificate of Registration* form prepared in accordance with Section 18.00 of the 2005 UST Regulations.
    - (ii) Written verification that the impressed current cathodic protection system for UST Nos. 001,002 and 003 has been inspected and tested by a qualified cathodic protection tester in accordance with Rule 8.07(B) of the 2005 UST Regulations.
    - (iii) Written verification showing compliance with the owner/operator 60-day cathodic protection system inspection requirements set forth in Rule 8.07(C) of the 2005 UST Regulations.
    - (iv) Written verification that the impressed current cathodic protection system for UST Nos. 001, 002 and 003 has been reactivated and that it is now functioning in accordance with its original design specifications, Rule 8.07

of the 2005 UST Regulations and the applicable National Codes of Practice set forth in Appendix B of the 2005 UST Regulations.

- (v) Written verification that the Facility is now in compliance with the annual shear valve testing requirements set forth in Rules 8.12 of the 2005 UST Regulations.
- (vi) Written verification that the alarms displayed by the CMS have been investigated and rectified in accordance with the requirements of Rules 8.13, 12.02 and 12.03 of the 2005 UST Regulations.
- (vii) Written verification that the liquid present in the spill containment basins and piping collection sumps on 8 December 2005 has been evacuated in disposed of in accordance with the regiments of Rules 8.16(A)(1) and 8.16(D) of the 2005 UST Regulations and Section 5.00 of the Rhode Island Rules and Regulations for Hazardous Waste Management, December 2002 (the "Hazardous Waste Regulations").
- (viii) Written verification that the Facility is now in compliance with the monthly CMS testing requirements set forth in Rule 8.1 5(E) of the 2005 UST Regulations; and
- (ix) Written verification that the Facility is now in compliance with the annual CMS Certification/testing requirements set forth in Rule 8.15(F) of the 2005 UST Regulations.

(b) Pay an administrative penalty of Twenty-Eight Thousand and Eighty-Two Dollars (\$28,082.00), assessed jointly and severally against each named party.

(16) After being properly served with a copy of the 2006 NOV, the Defendants failed to file a written request for an administrative hearing with the Department within the statutorily proscribed period of time for such request, and it became a *Final Compliance Order*.

(17) As of the date of the filing of the within Complaint, Defendants have failed to comply with the Order set forth by DEM in the 2006 NOV.

(18) On 26 April, 2006, DEM received plans and specification for proposed upgrades of the impressed current cathodic protection system for the USTs. The plans and specifications were submitted by PCA Engineering and New England LLC ("PCA") on behalf of Defendants.

(19) By letter dated 12 May 2006, DEM notified Defendants that an internal inspection of the USTs was required before DEM could approve of the proposed cathodic protection system upgrades.

(20) On 12 January 2007, DEM received information that an internal inspection of one of the USTs was performed by PCA in October of 2006. PCA reported that: all three USTs were emptied of their contents, one of the tanks was cut open prior to the internal inspection, the tank's interior walls were found to be severely corroded and the inspected tank was unsuitable for continued use. The inspector informed DEM that the other two USTs were presumably unfit for use as well.

(21) By letter dated 16 January 2007, DEM notified Defendants of the temporary closure requirements set forth in Rule 13.03 of the UST Regulations and required submittal of written verification of compliance with this Rule within seven days.

(22) On 23 January 2007, DEM received a letter indicating that all three USTs had been emptied of their contents, that the product pipelines had been evacuated, that the fill ports were secured and that the tanks were in temporary closure. DEM reviewed the submittal, however, it was determined that it did not provide written verification of full compliance with Rule 13.03 of the UST Regulations.

(23) By letter dated 16 March 2007, DEM again notified Defendants of the temporary closure requirements set forth in Rule 13.03 of the UST Regulations and required submittal of written verification of compliance with this Rule within seven days.

(24) Defendants failed to fully comply with the requirements set forth by DEM in the 16 January 2007 and 16 March 2007 letters, therefore, DEM did not issue an approval of the temporary closure request.

(25) On or about 18 April 2007, Defendants submitted plans and specification to DEM for the proposed installation of new USTs at the Facility. By letter dated 26 April 2007, DEM approved of the installation proposal.

(26) Between April 2008 and July 2012, Defendants repeatedly requested extensions of the new installation approval and DEM obliged. The most recent DEM approval expired on 26 April 2013.

(27) On 3 July 2013, DEM observed the Facility from the Marilyn Drive right-of-way and observed that the UST systems and motor fuel dispensing systems were not in service.

(28) On 18 July 2013, DEM filed a *Verified Complaint and Petition to Enforce a Final Compliance Order* (“Complaint”) in Rhode Island Superior Court in an effort to compel Defendants to bring the Facility into compliance with the UST Regulations.

(29) On 13 September 2013, DEM inspected the Facility and observed that the UST systems were not in service. The inspectors were informed by Facility personnel that the USTs were not in service. The inspectors observed that one of the tanks was holding water, the tank monitor had been deactivated, the submersible turbine pumps had been removed, the tank top sumps were full of liquid and the fill ports and dispensers had not been secured.

(30) By letter dated 16 September 2013, DEM notified Defendants of the issues of non-compliance revealed by the 13 September 2013 inspection. Defendants were provided with a Closure Application, instructed to complete it and submit it to DEM within 15 days and then complete the permanent closure of the USTs within 45 days of receipt of the letter.

(31) On 18 September 2014, DEM received a completed Closure Application from Defendants. DEM reviewed and approved the Closure Application and the proposed tank closure was scheduled for 20 November 2014. Defendants cancelled the closure appointment and then

rescheduled it for 7 January 2015. Defendants cancelled that appointment and rescheduled it for 22 April 2015. The 22 April 2015 appointment was also cancelled by Defendants. The Closure Application approval has since expired.

(32) The NOV issued to the Defendants on or about April 17, 2006 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

(33) Upon information and belief, the USTs have been out of service since at least October of 2006 and Defendants have maintained them as such without a temporary closure approval from DEM.

(34) As of the date of this amended complaint, the USTs remain in place in an abandoned state.

### **COUNT I**

*(Violation of the 2013 Final Compliance Orders)*

(35) Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 34 above.

(36) The NOV issued to the Defendants on or about April 17, 2006 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21) and § 42-17.6.

(37) 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.

(38) 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 to a Final Compliance Order.

(39) 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.

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

## **COUNT II**

*(Failure to Permanently Close USTs)*

(41) Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 34 above.

(42) Based on the foregoing facts, the Director has reasonable grounds to believe that defendants have violated the following statutes and/or regulations:

- A) **DEM's UST Regulations, Rule 13.02(A)**—prohibiting the abandonment of USTs.
- B) **DEM's UST Regulations, Rule 13.02(C)**--prohibiting the removal from service or temporary closure of USTs without the approval of DEM.
- C) **DEM's UST Regulations, Rule 13.05**—requiring the permanent closure of any USTs that have been removed from service for more than 180 days or are abandoned.

## **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:



Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), ordering Defendants to:

- A. Within 90 days of receipt of court order, submit a permanent closure application to the DEM—Office of Waste Management (“OWM”) UST Management Program at 235 Promenade Street, Suite 380, Providence, RI 02908-5767 and complete the removal of the UST Nos. 001, 002, and 003 in full compliance with Section 13.00 of the DEM’s UST Regulations and Section 13.00 of the DEM’s *Oil Pollution Control Regulations* (the “OPC Regulations”);
- B. Within 30 days of the removal of the USTs, submit to the OWM a *Closure Assessment Report* prepared by a qualified environmental consultant, in accordance with Section 13.11 of the DEM’s UST Regulations, the DEM’s *UST Closure Assessment Guidelines* and Section 13.00 of the DEM’s OPC Regulations.
- C. Within 30 days of the removal of the USTs, remove and properly dispose of any contaminated soil excavated during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to the OWM, in accordance with Section 13 of the DEM’s OPC Regulations;
- D. Within 60 days of receipt of written notification from the OWM to conduct a site investigation of the Property, retain a qualified consultant to perform the site investigation and submit a *Site Investigation Report* to the OWM within the time frame specified in accordance with Rules 12.08, 12.09 and 12.10 of the DEM’s UST Regulations; and
- E. Within 60 days of receipt of written notification from the OWM to submit a *Corrective Action Plan* (“CAP”), retain a qualified consultant to submit a proposed CAP to the OWM in accordance with Rules 12.12 through 12.18 of the DEM’s UST Regulations. The CAP shall be implemented in accordance with an order of approval issued by the OWM.
- F. Within 30 days, remit to the Department the administrative penalty of Twenty-Eight Thousand Eighty-Two dollars (\$28,082.00) as set forth in the 2013 NOV;
- G. Within 30 days, remit to the Department Economic Benefit from Noncompliance in the amount of Thirteen Thousand Two Hundred Sixty-Two dollars (\$13,260.00).
- H. 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, 2016.

\_\_\_\_\_  
Notary Public  
My commission expires:

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

Dated: August \_\_\_\_, 2016

\_\_\_\_\_  
*/s/ Susan Forcier*  
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