

**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-\_\_\_\_\_**

**BASSAM NAIEFEH** :  
**Defendant** :

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

Statement of the Case

This matter arises as a result of Defendant’s 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”). 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 Defendant’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 (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, Bassam Neiefeh, is a resident of the State of Rhode Island with an address of 30 Phillips Court, in the City of Cranston State of Rhode Island 02910.

#### 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 presence in, operation of, 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 City of Cranston land evidence records, BJ Enterprises, LLC is the owner of record for the subject property (the "Property") which is identified as City of Cranston Assessor's Map/Plat 16/1, Lot 2162, and is located at 717 Park Avenue in the City of Cranston, Rhode Island.

(7) BJ Enterprises, LLC, Certificate of Organization/Registration from the State of Rhode Island Secretary of State was revoked on August 1, 2012.

(8) Bassam Naiefeh is the last known Manager of BJ Enterprises, LLC.

(9) The Property is operated as a retail gasoline service station and includes three underground storage tanks ("USTs" or "tanks") which are used for storage of petroleum products. (the "Facility").

(10) 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 # 03016.

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

<u>UST ID No.</u>	<u>Capacity</u>	<u>Substance Stored</u>
007	12,000 gallons	Gasoline
008	5,000 gallons	Gasoline
009	3,000 gallons	Gasoline

(12) The USTs are subject to the UST Regulations.

(13) On or about March 8, 2013, the Department issued a letter by regular mail to all registered UST owner/operators, including the Defendant, 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.

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

(15) On or about December 12, 2013 the Department issued a letter to the Defendant for the payment of registration fees for the USTs. Said fees had not been paid since calendar year 2009 and at that time the Defendant owed one thousand six hundred and fifty (\$1,650.00) dollars in outstanding registration and late fees.

(16) On April 14, 2014, the Department issued a NOV alleging violations of the UST Regulations for (1) assessment of UST registration fees and late fees (Rule 6.10 and 6.13), (2) requiring UST owners/operators to inspect their facility and complete and submit the *Compliance Certification Forms* within the time frame specified (Rule 8.03), and (3) 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 (Rule 8.22).

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

- (a) Submit to the DEM-Office of Management Services a check in the amount of one thousand six hundred and fifty (\$1,650.00) dollars made payable to the “General Treasurer, State of Rhode Island;
- (b) Submit the Compliance Certification Forms to the DEM’s Office of Compliance and Inspection (“OC&I”) at 235 Promenade Street, Suite 220, Providence RI 02908-5767 in accordance with Rule 8.03 of the DEM’s UST Regulations;
- (c) 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 the OC&I;
- (d) 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 the OC&I;
- (e) 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 0208-5767 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 the OC&I;
- (f) Pay the administrative penalty of nine thousand (\$9,000.00) 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 by the BJ Enterprises, LLC with the Defendant listed as the manager of said company.

(21) Since the NOV was issued and became a Final Compliance Order, the Defendant has failed to comply with all terms of the Order and the all 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 Defendants have failed to: (a) pay all past due UST registration fees and associated late fees; (b) complete and submit a *Compliance Certification Checklist, Certification Statement*; and (c) pay the administrative penalty of nine (\$9,000.00) dollars as required by the NOV and the Final Compliance Order.

### **COUNT I**

#### *(Violation of Final Compliance Order)*

(24) Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 23 above.

(25) The NOV issued to the Defendant on or about April 14, 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 and paying the administrative penalty as required.

(30) 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 within sixty days (60) days:
  - a. Pay all past due or outstanding UST registration fees and associated late fees;
  - b. Submit to DEM a completed UST Environmental Results Program *Compliance Certification Checklist*;
  - c. Submit to DEM a completed UST Environmental Results Program *Certification Statement* and any necessary *Return to Compliance Plans* for the Facility in accordance with Rule 8.03 of the UST Regulations;
- B. 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;

- C. Within thirty (30) days, remit to the Department the administrative penalty of Nine (\$9,000.00) 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: February \_\_\_\_\_, 2016

/s/Tricia Quest  
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