



Island, having offices located at 235 Promenade Street, Providence, Rhode Island, 02908.

(2) Defendant, Reservoir Ventures II, LLC, is a duly organized corporation authorized to do business in the State of Rhode Island with its principal place of business at 300 Centerville Road in the City of Warwick, 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 Portsmouth land evidence records, Reservoir Ventures II, LLC, is the owner of record for the subject property which is identified as Town of Portsmouth Assessor's Plat 58, Lot 3, and is located at 1074 East Main Road in the Town of Portsmouth, Rhode Island (the "Property").

(7) Reservoir Ventures, LLC took title to the Property on December 16, 2013.

(8) The Property was previously a motor fueling station with three underground storage tanks ("USTs" or "tanks") which were used for storage of petroleum products (the "Facility").

(9) 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 #00578.

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

<u>UST ID No.</u>	<u>Date Installed</u>	<u>Capacity</u>	<u>Substance Stored</u>
001	1973	6,000 gallons	Premium Gasoline
002	1973	6,000 gallons	Regular Gasoline
003	1973	6,000 gallons	Diesel Fuel

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

(12) The Defendant is the current owner of the Property.

(13) The previous owner of the property was 1074 East Main Road, LLC.

(14) 1074 East Main Road, LLC took ownership of the Property on August 16, 2006.

(15) On or about May 17, 2013 the Department issued a NOV to Chaouki Sarkis d/b/a 1074 East Main Road, LLC alleging violation of the UST Regulations for not complying with:

- (a) Rule 6.10 of the UST Regulations, requiring the owner/operator to pay annual UST registration fees to DEM;
- (b) Rule 13.02(A) of the UST Regulations, prohibiting the abandonment of USTs;
- (c) Rule 13.05 of the UST Regulations, requiring the permanent closure of any USTs that have been removed from service for more than one hundred eighty (180) days or are abandoned.

(16) The NOV ordered:

- (a) Within ninety (90) days of receipt of the NOV to submit a permanent closure application to DEM and complete the removal of the USTs 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 ("OPC Regulations");
- (b) Within thirty (30) days of the removal of the USTs, submit to DEM-Office of Waste Management a Closure 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 thirty (30) days of the removal of the USTs, remove and properly dispose of any contaminated soil excavated during the tank closure and, within then (10) days of the soil disposal, submit documentation of disposal to the DEM-Office of Waste Management, in accordance with Section 13 of the DEM's OPC Regulations;
- (d) Within sixty (60) days of receipt of written notification from DEM to conduct a site investigation of the Property, retain a qualified consultant to perform the site investigation and submit a Site Investigation Report to DEM within the time frame specified by DEM in accordance with Rules 12.08, 12.09 and 1.10 of the DEM's UST Regulations;
- (e) Within sixty (60) day of receipt of written notification from DEM to submit a Corrective Action Plan ("CAP"), retain a qualified consultant to submit a proposed CAP to DEM 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 DEM;
- (f) Pay the administrative penalty of Eleven Thousand One Hundred and Eighty-Seven (\$11,187.00) Dollars.

(17) The NOV was recorded in the Land Evidence Records for the Town of Portsmouth on May 23, 2013.

(18) No request an administrative hearing was made.

(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 prior property owner did not comply with the Orders of the NOV or the subsequent Final Compliance Order.

(21). The Property was transferred to the Defendant on December 16, 2013 and whom remains the current owner.

(22) Since the Defendant took ownership of the Property the Defendant has failed to comply with the all the terms of the Order and the terms of the NOV.

(23) On or about September 1, 2015 the Defendant caused the USTs to be removed from the ground.

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

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

### **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 on or about May 17, 2013 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

(28) The NOV was recorded in the Land Evidence Records for the Town of Portsmouth on or about May 23, 2013.

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

(30) 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.

(31) 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.

(32) Pursuant to *R.I. Gen. Laws §42-17.1-2 (31)*, any subsequent transferee of a facility, wherein an Order or Notice has been recorded, shall be responsible for complying with the requirements of the order or notice.

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

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

## **COUNT 2**

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

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

(36) The NOV issued on or about May 17, 2013 was issued pursuant to *R.I. Gen. Laws § 42-17.1-2(21)*.

(37) The NOV is recorded in the Town of Portsmouth Land Evidence Records in accordance with *R.I. Gen. Laws Chapter 34-13 and Section 42-17.1-2 (31)*.

(38) The Administrative Penalties assessed in the NOV on or about May 17, 2013, were assessed pursuant to *R.I. Gen. Laws §42-17.6-3*.

(39) 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 administrative penalty proposed becoming final; and the manner of payment thereof.

(40) 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.

(41) 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.

(42) Defendant has failed or refused to comply with the administrative penalties assessed in the May 17, 2013 NOV.

(43) 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:

- a) Within fifteen (15) days submit to DEM-Office of Waste Management a Closure 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; 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;
  - b) Within fifteen (15) days, remove and properly dispose of any contaminated soil excavated during the tank closure and, within then (10) days of the soil disposal, submit documentation of disposal to the DEM-Office of Waste Management, in accordance with Section 13 of the DEM's OPC Regulations;
  - c) Within sixty (60) days of receipt of written notification from DEM to conduct a site investigation of the Property, retain a qualified consultant to perform the site investigation and submit a Site Investigation Report to DEM within the time frame specified by DEM in accordance with Rules 12.08, 12.09 and 1.10 of the DEM's UST Regulations;
  - d) Within sixty (60) day of receipt of written notification from DEM to submit a Corrective Action Plan ("CAP"), retain a qualified consultant to submit a proposed CAP to DEM 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 DEM;
- 2) If Defendant fails to abide by the terms of paragraph A, as stated above within 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 Eleven Thousand One Hundred and Eighty-Seven (\$11,187.00) 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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