

TERRENCE GRAY,
in his capacity as Director,
RHODE ISLAND DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Plaintiff,

vs.

75 Goff Avenue Realty Trust

Defendant

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C.A. No. PC 22-_____

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

A. INTRODUCTION

1. This matter arises as a result of a Final Decision and Order issued by Hearing Officer David Spinella of the Rhode Island Department of Environmental Management (“RIDEM” or “Department”) Administrative Adjudication Division (“AAD”) on January 26, 2017 (hereinafter the “Final Order”). The Final Order upheld a Notice of Violation (“NOV”) issued by the Department against the Defendant for violations of the *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials* (the “UST Regulations”)¹ promulgated pursuant to R.I. Gen. Laws § 46-12-3(21). The NOV relates to the failure of the Defendant to comply with the UST Regulations requirements for properly close non-compliant and abandoned underground storage tanks (USTs).

¹ The applicable UST Regulations are those that were in effect as of the date of the NOV. See Regulation #DEM-OWM-UST03-11 (effective 4/26/2011 to 11/20/2018) (available at <https://risos-apa-production-public.s3.amazonaws.com/DEM/6389.pdf>).

B. PARTIES

2. Plaintiff, Terrence Gray, is the duly appointed Director of the RIDEM, whose offices are located at 235 Promenade Street, Providence, Rhode Island.
3. Defendant, 75 Goff Ave Realty Trust, is a trust established by a Declaration of Trust dated May 7, 1999 for which the trustees are Yohannes Bein (hereinafter “Trustee Bein”) and Simret Zemrht, and which owns the subject Property.

C. JURISDICTION & VENUE

4. Subject matter jurisdiction in this case is properly conferred in the Court pursuant to R.I. Gen. Laws §§ 8-2-13, 42-17.1-2(21)(vi), and 42-17.6-4(c).
5. Personal jurisdiction over the Defendant is properly conferred in this Court based on Defendant’s operation of business and ownership of real property within the State of Rhode Island.
6. Venue is properly placed in this Court pursuant to R.I. Gen. Laws §§ 9-4-3 and 42-17.6-4(c).

D. FACTS

7. The subject property (the “Property”) is located at 42 Dexter Street (a/k/a 75 Goff Avenue) and identified by the City of Pawtucket as Assessor’s Plat 22, Lot 493.
8. The Property includes a service station and underground storage tanks (the “Facility”).
9. According to the City of Pawtucket Tax Assessor Database and Land Evidence Records (Book 4737, Page 4), Defendant owns the Property.
10. RIDEM issued Underground Storage Tank Facility Certificate of Registration No. 544 for the USTs at the Facility on this Property, Tank Numbers 2, 4, and 6, containing gasoline and diesel.

11. On January 5, 2016, RIDEM issued a NOV to the Defendant alleging violations of the UST Regulations for the failure to properly close non-compliant and abandoned USTs, specifically citing Rules 8.21(H), 13.02(A), and 13.05 of the UST Regulations.
12. The NOV imposed an administrative penalty in the amount of \$7,792.
13. The NOV ordered certain compliance terms to permanently close the subject USTs:
 - a. Within 90 days of receipt of the NOV, 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 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* (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.
 - 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.
14. Pursuant to R.I. Gen. Laws § 42-17.1-2(31), on January 15, 2016, the NOV was recorded in the Land Evidence Records of the City of Pawtucket, Book 3909, Page 197.

15. Defendant requested an Administrative Hearing to contest the violations alleged in the NOV in accordance with R.I. Gen. Laws §§ 42-17.1-1 *et seq.*, 42-17.6-1 *et seq.*, 42-17.7-1 *et seq.*, and 42-35-1 *et seq.*
16. An administrative hearing was held on November 28, 2016, by Hearing Officer David Spinella of the AAD.
17. At said hearing, Trustee Bein appeared, testified, and argued on behalf of the Defendant.
18. The Final Order was issued by Hearing Officer Spinella on January 26, 2017, upholding the NOV and denying Defendant's appeal.
19. The Final Order was mailed to Trustee Bein to the Property address by first class mail (as stated on the Certification section of the Final Order) in accordance with § 42-35-12 of the Administrative Procedures Act (APA).
20. Defendant did not appeal the Decision and Order of the Hearing Officer to Superior Court in accordance with § 42-35-15 of the APA.
21. To date, the Defendant have failed to comply with the NOV and to pay the administrative penalty.
22. The non-compliance poses a serious environmental risk. Abandoned USTs present a threat to the environment if they are not evacuated of their contents or if persons attempt to re-use them after an extended period of abandonment. The volatile nature of gasoline presents both a public health hazard (due to the potential inhalation of benzene vapors) and a potential public safety hazard (due to the potential for explosion). Petroleum products are capable of causing significant soil and groundwater contamination if released into the environment.

COUNT I

(Violation of a Compliance Order)

23. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 22 above.
24. The NOV was properly issued in accordance with R.I. Gen. Laws § 42-17.1-2(21).
25. In accordance with R.I. Gen. Laws § 42-17.1-2(21)(i), the NOV notified the Defendant of the facts that gave the Department reasonable grounds to believe that a violation of law had occurred; of the statutes and/or regulation(s) violated; and of the Defendant's right to request an administrative hearing before the Department's Administrative Adjudication Division by filing a request for hearing with twenty (20) days of service of the NOV.
26. The violations alleged in the NOV, after an administrative hearing, have been upheld in the Final Decision and Order of AAD.
27. The Final Order became a Compliance Order enforceable in Superior Court pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi).
28. Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi), a Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Compliance Order rests with the Defendant.
29. As of the date of filing this Complaint, the Defendant has failed to comply with the compliance provisions of the Compliance Order.

COUNT II

(Violation of a Compliance Order Administrative Penalties)

30. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 29 above.

31. The NOV was properly issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).
32. The administrative penalty assessed in the NOV was assessed pursuant to R.I. Gen. Laws § 42-17.6-3.
33. In accordance with R.I. Gen. Laws § 42-17.6-3(a), the NOV notified the Defendant of 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 Defendant's right to request an administrative hearing before the RIDEM'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 prescribed would result in the associated administrative penalty proposed becoming final; and the manner of payment thereof.
34. The assessed administrative penalty stated in the NOV was deemed to have been properly calculated and was upheld after a hearing as ordered in the Final Order.
35. The Final Order became a Compliance Order enforceable in Superior Court pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi).
36. Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi), a Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Compliance Order rests with Defendant.
37. Defendant has failed to pay the administrative penalty assessed in the NOV.

WHEREFORE, Plaintiff, Terrance Gray, in his capacity as Director of the Rhode Island Department of Environmental Management, hereby requests that Judgment be entered in favor of the Plaintiff and that the Plaintiff be granted the following relief to achieve compliance with the terms of the NOV:

1. Permanent Injunctive Relief, ordering Defendants to:
 - a. Within 30 days, submit a completed *Permanent Closure Application for Underground Storage Tanks* (the “Closure Application”) to the DEM.
 - b. Within 90 days of approval of the Closure Application by the DEM, complete the permanent closure of the USTs. The permanent closure shall be completed in full compliance with Section 1.15 of the DEM’s UST Regulations.
 - c. Within 30 days of the removal of the USTs, submit to the DEM a *Closure Assessment Report* (the “Closure Report”) that has been prepared by an environmental consultant in accordance with Section 1.15(D)(10) of the DEM’s UST Regulations, the *UST Closure Assessment Guidelines*, and Section 2.13 of the DEM’s *Oil Pollution Control Regulations*.
 - d. Within 30 days of the removal of the USTs, remove and properly dispose of any contaminated soil encountered during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to the DEM.
 - e. If DEM requires, based on review of the Closure Assessment Report, that a site investigation be performed by an environmental consultant and that a *Site Investigation Report* (“SIR”) be submitted in accordance with Section 1.14(H) of the DEM’s UST Regulations, said SIR shall be submitted within 30 days. If DEM requires, based on the information in the SIR, the submittal of a *Corrective Action Plan* (“CAP”), said CAP shall be submitted within 30 days and in accordance with Section 1.14(I) of the DEM’s UST Regulations. The CAP shall be implemented in accordance with an *Order of Approval* issued by the DEM.
2. Award of Administrative Penalty, ordering Defendant to pay the full amount of \$7,792 to the Plaintiff, which is the amount of the administrative penalty assessed in the NOV; and
3. Such further relief as this Court deems just and equitable in accordance with the facts of this case.

VERIFICATION

I, Tracey Tyrrell, Supervising Environmental Scientist of Rhode Island Department of Environmental Management's Office of Compliance and Inspection and an authorized representative of the Director, first being duly sworn upon oath, hereby state that the facts contained in this Complaint to the best of my knowledge and belief, true and accurate.

For the Director,

By: _____
TRACEY TYRRELL
Supervising Environmental Scientist
Office of Compliance and Inspection
Dated: November __, 2022.

**STATE OF RHODE ISLAND
PROVIDENCE COUNTY**

Subscribed and sworn to before me this ____ day of November, 2022.

NOTARY PUBLIC
My commission expires:

Submitted by:
Terrence Gray,
in his capacity as Director,
RHODE ISLAND DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By his attorney,

Jenna Giguere, Esq. (#8744)
RIDEM Office of Legal Services
235 Promenade Street, Fourth Floor
Providence, RI 02908
(401) 222-6607
(401) 222-3378 (facsimile)
jenna.giguere@dem.ri.gov