

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

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

Plaintiff

vs.

C. A. No. PC-2024-

CHARLES STREET REALTY, INC.
and KELLY’S CAR WASH, INC.
Defendants

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

Statement of the Case

This matter arises as a result of Defendants’ violations of the Rhode Island Department of Environmental Management’s (the “Department” or “RIDEM”) *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)(vi). The compliance order in question became final and effective as a result of the Defendants’ failure to request a hearing before the Department’s Administrative Adjudication Division (“AAD”). 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, Terrence Gray, 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 Charles Street Realty, Inc. (“Charles Street”) is a duly organized corporation authorized to do business in the State of Rhode Island with its principal place of business at 200 Charles Street, Providence, Rhode Island.

3. Defendant Kelly’s Car Wash, Inc. (“KCW”) is a duly organized corporation authorized to do business in the State of Rhode Island with its principal place of business at 200 Charles Street, Providence, Rhode Island.

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)(vi), 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’ operation 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)(vi) and R.I. Gen. Laws § 9-4-3, as amended.

FACTS

7. The subject property is located at 200 Charles Street (also referred to as 202 Charles Street) in Providence, Rhode Island, which is identified as Assessor’s Plat 2, Lot 26 (the “Property”).

8. The Property includes a convenience store, service station, and motor fuel storage and dispensing system with four underground storage tanks (“USTs” or “tanks”) which are used for storage of petroleum products (the “Facility”).

9. The Facility is registered with the Department as UST Facility No. 00616.

10. The USTs are registered with RIDEM as follows:

<u>UST ID No.</u>	<u>Date Installed</u>	<u>Capacity</u>	<u>Substance Stored</u>
007	1973	1,000 gallons	Heating Oil
008	1 May 1994	12,000 gallons	Gasoline
009	1 May 1994	12,000 gallons	Gasoline
010	1 May 1994	6,000 gallons	Diesel

11. The USTs are subject to the UST Regulations.

12. Defendant Charles Street is the owner of the Property.

13. Defendant KCW is the operator of the Facility.

14. UST No. 007 is a single-walled, bare steel tank.

15. On or about November 18, 2018, the UST Regulations were amended to require that single-walled heating oil USTs installed between January 1, 1971 and December 31, 1980 be tested for tightness by a RIDEM-licensed tightness tester before December 31, 2022.

16. On July 28, 2022, RIDEM issued a letter to KCW by regular mail as a reminder that the heating oil tank (UST No. 007) required testing before December 31, 2022.

17. As of the date of this Complaint, Defendants have failed to submit written verification that UST No. 007 was tested for tightness by a RIDEM-licensed tightness tester at least once before December 31, 2022.

18. On or about November 8, 2021, RIDEM received a *Standardized Hydrostatic Tightness Testing* form for the Facility, which was submitted by Compliance Testing Services, Inc. on behalf of the Defendants reporting that the tank top sumps and dispenser sumps for UST Nos. 008, 009, and 010 had failed tightness tests performed on October 11, 2021.

19. On or about November 18, 2022, RIDEM issued a Notice of Intent to Enforce to the Defendants. Said Notice of Intent to Enforce cited one violation of the UST Regulations for

operating the USTs after failed tank top and dispenser sump tests and directed that Defendants immediately take UST No. 008, 009, and 010 out of operation until the tank top and dispenser sumps are repaired or replaced.

20. On or about March 21, 2023, RIDEM inspected the Facility and observed that the USTs were still in operation. The Facility was open, gasoline and diesel were being offered for sale, and the inspector observed customers dispensing fuel into their vehicles.

21. Defendants failed to comply with the Notice of Intent to Enforce because UST Nos. 008, 009, and 010 were not taken out of operation until the sumps were repaired or replaced.

22. On or about August 24, 2023, the Department issued an NOV to the Defendants alleging violations of the UST Regulations for not complying with:

(a) Part 1.10(F)(4)(a)(2) of the UST Regulations, requiring that single-walled heating oil USTs installed between 1 January 1971 and 31 December 1980 be tested for tightness by a RIDEM-licensed tightness tester before 31 December 2022.

(b) Part 1.10(N)(3)(d)(1) of the UST Regulations, requiring that USTs be removed from service if an associated tank top or dispenser sump fails a tightness test.

23. The NOV ordered the Defendants to:

- a. IMMEDIATELY remove UST Nos. 008, 009, and 010 from service and cease and desist from dispensing fuel from the UST systems. Written verification of compliance shall be submitted to RIDEM's Office of Compliance and Inspection ("OC&I") within 7 days.
- b. UST Nos. 008, 009, and 010 shall be kept out of service until the deficient tank top sumps and dispenser sumps have been repaired or replaced in full compliance with Part 1.10(N)(3)(d), Part 1.11, and Part 1.12 of the UST Regulations. Any and all repairs or tank system modifications require prior written notification to and approval by RIDEM's Office of Land Revitalization and Sustainable Materials Management (OLR&SMM). If the UST systems are not repaired or modified within 1 year, permanently close the UST system in full compliance with Part 1.15 of the UST Regulations.

- c. Within 30 days of receipt of the NOV, procure the services of a RIDEM-licensed tightness tester to test UST No. 007 for tightness in accordance with Part 1.10(F)(4)(a)(2) and Part 1.10(H) of the UST Regulations. Original copies of the report shall be submitted to OC&I and OLR&SMM in accordance with Part 1.10(H)(4) of the UST Regulations.
24. Pursuant to R.I. Gen. Laws § 42-17.6-2, the NOV assessed an administrative penalty of Ten Thousand Six Hundred Twenty Five Dollars (\$10,625.00).
25. Defendants did not request an administrative hearing.
26. Pursuant to R.I. Gen. Laws §§ 42-17.1.2(21)(vi) and 42-17.6-4(b), the NOV and associated administrative penalties contained within automatically became a Final Compliance Order enforceable in Superior Court.
27. The Property continues to be owned by Charles Street and operated by KCW.
28. Since the NOV was issued and became a Final Compliance Order, the Defendants have failed to comply with the terms of the Order and the terms of the NOV.
29. The Defendants' failure to comply with the NOV represents a continuing violation of the Department's UST Regulations.
30. As of the date of the filing of this Complaint, the Defendants have failed to perform any actions required by the Final Compliance Order or NOV.

COUNT 1

(Violation of Final Compliance Order)

31. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 30 above.
32. The NOV issued to the Defendants on or about August 24, 2023 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).
33. 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 the AAD by filing a request for hearing within twenty (20) days of service of the NOV.

34. Defendants, by failing to appeal the issuance of the NOV, are deemed to have waived their rights to an adjudicatory hearing, resulting in the NOV automatically becoming a Final Compliance Order of the Department.

35. 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.

36. Defendants have failed or refused to comply with the requirements of the Final Compliance Order by neglecting to perform the actions required to return to compliance with the UST Regulations.

37. Each day of non-compliance represents a continuing violation of the Department's UST Regulations.

COUNT 2

(Violation of Final Compliance Order - Administrative Penalties)

38. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 37 above.

39. The NOV issued to the Defendants on or about August 24, 2023 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

40. The administrative penalties assessed in the NOV issued to the Defendants on or about December 27, 2022, were assessed pursuant to R.I. Gen. Laws §42-17.6-3.

41. In accordance with R.I. Gen. Laws § 42-17.6-3(a), the aforementioned NOV notified the

Defendants 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 Defendants' right to request an administrative hearing before the AAD by filing a request for hearing within twenty (20) days of service of the NOV and that their 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.

42. Pursuant to R.I. Gen. Laws §42-17.6-4(b) and §42-17.1-2(21)(i) Defendants, by failing to appeal the issuance of the NOV and the proposed administrative penalty, is deemed to have waived their rights to an adjudicatory hearing, resulting in the NOV automatically becoming a Final Compliance Order of the Department and the proposed administrative penalty becoming final.

43. 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.

44. Defendants have failed or refused to comply with the administrative penalties assessed with the August 24, 2023 NOV.

45. Each day of 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, Terrence Gray, in his 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:
1. IMMEDIATELY remove UST Nos. 008, 009, and 010 from service and cease and desist from dispensing fuel from the UST systems. Written verification of compliance shall be submitted to RIDEM's Office of Compliance and Inspection ("OC&I") within 7 days.
 2. UST Nos. 008, 009, and 010 shall be kept out of service until the deficient tank top sumps and dispenser sumps have been repaired or replaced in full compliance with Part 1.10(N)(3)(d), Part 1.11, and Part 1.12 of the UST Regulations. Any and all repairs or tank system modifications require prior written notification to and approval by RIDEM's Office of Land Revitalization and Sustainable Materials Management (OLR&SMM). If the UST systems are not repaired or modified within 1 year, permanently close the UST system in full compliance with Part 1.15 of the UST Regulations.
 3. Within 30 days of receipt of the NOV, procure the services of a RIDEM-licensed tightness tester to test UST No. 007 for tightness in accordance with Part 1.10(F)(4)(a)(2) and Part 1.10(H) of the UST Regulations. Original copies of the report shall be submitted to OC&I and OLR&SMM in accordance with Part 1.10(H)(4) of the UST Regulations.
- 2) Within thirty (30) days, remit to the Department the administrative penalty of Ten Thousand Six Hundred Twenty Five Dollars (\$10,625.00) as set forth in the NOV; and
 - 3) 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 January, 2024.

Notary Public
My commission expires:

Respectfully submitted,

TERRENCE GRAY,
in his capacity as DIRECTOR,
Rhode Island Department of
Environmental Management
By his attorney:

Dated: January _____, 2024

/s/ Maria I. Rice

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