



the State of Rhode Island with its principal place of business at 74 Friendship Street in the Town of Westerly, 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 Charlestown land evidence records, Asad Ali, LLC is the owner of record for the subject property which is identified as Town of Charlestown Assessor's Plat 5, Lot 96, and is located at 5300 Post Road in the Town of Charlestown, Rhode Island (the "Property").

(7) The Property includes a motor fuel filling station and two UST's which are used for storage of petroleum products (the "Facility").

(8) 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 #00535.

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

<u>UST ID No.</u>	<u>Capacity</u>	<u>Substance Stored</u>
002	8,000 gallons	Gasoline
004	8,000 gallons	Gasoline

- (10) The USTs are subject to the UST Regulations.
- (11) On or about June 24, 2014 the Department issued a NOV to the Defendant alleging violations of the UST Regulations.
- (12) On or about May 29, 2015 the Parties entered into a Consent Agreement to resolve the NOV.
- (13) Among other terms the Consent Agreement required the Defendant to commence quarterly groundwater monitoring evaluations in accordance with the Corrective Action Plan and submit the evaluation to RIDEM.
- (14) To date, the Defendant has failed to comply with the Consent Agreement in that no Groundwater monitoring evaluations have been submitted to RIDEM.
- (15) The Consent Agreement, by its terms, has the full force and effect of a Final Compliance Order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws §42-35-1 et seq., from which no appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Law §42-17.1-2(21)(vi).
- (16) The Property continues to be owned by the Defendant.
- (17) As of the date of this Complaint, the Defendant has failed to fully comply with the terms of the Consent Agreement. Such non-compliance constitutes a serious environmental and public health hazard to the Defendant, his neighbors, and the general public.

### **COUNT I**

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

- (18) Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 25 above.
- (19) The NOV issued to the Defendant on or about June 24, 2014 was issued pursuant to R.I.

Gen. Laws § 42-17.1-2(21).

(20) 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.

(21) 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.

(22) 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.

(23) The Plaintiff and Defendant, after not requesting a hearing to the Administrative Adjudication Division, entered into a Consent Agreement that has the full force and effect of a Final Compliance Order.

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

(25) 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. Immediately commence quarterly groundwater monitoring evaluations in accordance with the Corrective action Plan and submit the evaluation to the Office of Waste Management at 235 Promenade Street, Suite 380, Providence RUI 02908 until the groundwater is in compliance with the GA Groundwater Objectives in the DEM's *Groundwater Quality Rules*, for a consecutive hydrogeological cycles.
- 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; and
- C. 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 September, 2017.

\_\_\_\_\_  
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: January 8, 2018

/s/Tricia Quest  
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