

SUPERIOR COURT

C. A. No. PC 16-_____

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.

(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, Asad Ali, LLC, was a duly organized corporation authorized to do business in the State of Rhode Island until said was revoked on May 14, 2014.

(3) Defendant, Amed Choury, is the last know President of Asad Ali, LLC and is a resident of the State of Connecticut, City of Norwich.

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)(v), as amended, and R.I. Gen. Laws § 8-2-13, as amended.

(5) 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.

(6) 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

(7) According to the City of Pawtucket land evidence records, Asad Ali, LLC is the owner of record for the subject property which is identified as City of Pawtucket Assessor's Plat 17, Lot 830, and is located at 823 Newport Avenue in the City of Pawtucket, Rhode Island (the "Property").

(8) Asad Ali, LLC, Certificate of Organization/Registration from the State of Rhode Island Secretary of State was revoked on May 14, 2014.

(9) Amed Choury is the last named President of Asad Ali, LLC.

(10) The Property includes a motor fuel filling station and four underground storage tanks ("USTs" or "tanks") which are used for storage of petroleum products (the "Facility").

(11) 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 #00591.

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

<u>UST ID No.</u>	<u>Capacity</u>	<u>Substance Stored</u>
008	10,000 gallons	Gasoline
009	5,000 gallons	Gasoline
010	10,000 gallons	Gasoline
011	5,000 gallons	Diesel

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

(14) On or about September 25, 2012 the Department notified the Defendant, via correspondence, that it was not in compliance of the requirements of Rule 8.22 of the UST Regulations and required that the Facility be brought into compliance with said Rule.

(15) On or about December 10, 2012 the Department again notified the Defendant, via correspondence, that it was not in compliance of Rule 8.22 of the UST Regulations and required that the Facility be brought into compliance with said Rule.

(16) On or about October 2, 2013 the Department issued a Notice of Intent to Enforce to the Defendant for its continued failure to meet the requirements of Rule 8.22 of the UST Regulations.

(17) The Defendant has failed to submit written verification to the Department of compliance with Rule 8.22 of the UST Regulations.

(18) On or about February 25, 2014 the Department issued a NOV to the Defendant alleging violations of the UST Regulations for not complying with Rule 8.22 of the UST Regulations, requiring all regulated UST facility owners/operators to submit a *Certified UST Facility*

Operators Registration Form to DEM to verify that trained and certified UST facility operators were assigned to the facility prior to August 1, 2012 and on duty at the facility during all operating hours.

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

- (a) 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 DEM's Office of Compliance and Inspection (OC&I") at 235 Promenade Street, Suite 220, Providence, RI 02908-5767;
- (b) 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;
- (c) 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 02908-5767 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;
- (d) Pay the administrative penalty of five thousand (\$5,000.00) dollars.

(20) The Defendant did not request an administrative hearing.

(21) 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.

(22). The Property continues to be owned by Asad Ali, LLC with the Defendant listed as the President of said company.

(23) Since the NOV was issued and became a Final Compliance Order, the Defendant has failed to comply with the terms of the Order and the terms of the NOV.

(24) The Defendant's failure to comply with 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: (a) provide written verification to the Department of compliance with Rule 8.22 of the UST Regulations, regarding assigning 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; (b) provide written verification to the Department that all Facility employees have been trained as at least a 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; (c) complete a *Certified UST facility Operators Registration Form* and submit it to the Department; (d) pay the administrative penalty of five thousand (\$5,000.00) dollars as required by the NOV and the Final Compliance Order.

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 to the Defendant on or about February 25, 2014 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

(28) 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.

(29) 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.

(30) 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.

(31) 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.

(32) 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. 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 UST Regulations. Written verification of compliance shall be submitted to the OC&I;
 - b. Train all 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 UST Regulations. Written verification of compliance shall be submitted to the OC&I;
 - c. Submit a completed *Certified UST Facility Operators Registration Form* to the DEM-Office of Waste Management's UST Management Program in accordance with Rules 8.22(A)(4) of the UST Regulations.

- d. Submit copies of the Class A and Class B UST facility operators' examination certificates along with a copy of the *Certified UST Facility Operators Registration Form* to OC&I;
- 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 Five Thousand (\$5,000.00) 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 February, 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: February ____, 2016

/s/Tricia Quest
Tricia Quest., Esq., RI Bar #7362
RI DEM Office of Legal Services
235 Promenade Street, 4th Floor
Providence, RI 02908
Telephone: (401) 222-6607
Fax: (401) 222-3378
tricia.quest@dem.ri.gov