

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

JANET L. COIT,  
in her capacity as Director,  
RHODE ISLAND DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT,

Plaintiff

vs.

C. A. No. PC 11- 1049

JOHN R. GULLISON and  
KJ'S PUB, INC.,

Defendants.

**VERIFIED COMPLAINT AND  
PETITION FOR INJUNCTIVE RELIEF**

Statement of the Case

This matter arises as a result of the Defendants' violations of the Rhode Island Pollution Control Act, R.I. Gen. Laws § 46-12-1, et seq., and the Rhode Island Department of Environmental Management's (the "Department") *Oil Pollution Control Regulations, Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* and the *Rules and Regulations for Groundwater Quality* (the "UST Regulations").

This matter seeks injunctive relief 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 timely request an administrative hearing in response to a Notice of Violation and Order issued by the Department pursuant to its authority under R.I. Gen. Laws § 42-17.1-2(21)(i). Plaintiff seeks temporary, preliminary, and permanent injunctive relief enforcing the Notice of Violation and Order (the "NOV") as a final compliance order, including, but not limited to, the payment of all administrative penalties as set forth therein.

SUPERIOR COURT  
FILED

HENRY S. KINCH JR., CLERK

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## PARTIES

(1) Plaintiff, Janet L. Coit, is the duly appointed Director ("Director") of 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, John R. Gullison ("Gullison"), is a resident of the State of Rhode Island and is the current owner of the premises at 59-61 Aquidneck Avenue in Middletown, Rhode Island (also referred to as 51 Aquidneck Avenue, Assessor's Plat 115SE, Lot 169A in the Land Evidence Records for the Town of Middletown, Rhode Island and hereinafter referred to as the "Property"). Gullison also owned the Property from July 31, 1995 until February 8, 1999, and reacquired the Property on April 12, 2002.

(3) Defendant, KJ's Pub, Inc. ("KJ's"), is a Rhode Island domestic profit corporation with a principal place of business at the Property (61 Aquidneck Avenue, Middletown, Rhode Island). KJ's owned the Property from April 1, 1999 until April 12, 2002.

## 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 Defendants in this case is properly conferred in this Court based upon Defendants' presence in, operation of, 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) The Property was formerly operated as a retail gasoline service station (the "Facility").

- (8) The Facility was identified by the Department as UST Facility # 17272.
- (9) During operation of the Facility, four (4) underground storage tanks ("USTs" or "Tanks") were located on the Property.
- (10) The Tanks were used for the storage of gasoline and waste oil petroleum products.
- (11) On September 18, 1995, the Department notified Gullison that the Tanks must be permanently closed because they were abandoned.
- (12) On September 21, 1995, the Department received a *Permanent Closure Application* from Gullison for the Tanks.
- (13) On October 25, 1995, the Tanks were removed and permanently closed.
- (14) During the removal process, evidence of a release of petroleum product and/or hazardous materials was detected.
- (15) On April 25, 1996, the Department notified Gullison that he must procure the services of an environmental consultant to perform a site investigation and to submit a Site Investigation Report ("SIR") to the Department.
- (16) On July 3, 1996, the Department again notified Gullison that he must perform a site investigation and submit the SIR to the Department, due to the contamination present on the Property.
- (17) On September 19, 1996 and November 6, 1997, Department personnel conducted inspections of the Property, which inspections revealed that contaminated soil from the tank removal remained on the Property.
- (18) On July 3, 1998, the Department issued a Notice of Intent to Enforce ("NOI") to Gullison requiring him to:

a. Submit documentation that an environmental consultant had been retained within 30 days; and

b. Remove the contaminated soil from the Property within 30 days and to submit documentation of disposal within 10 days.

(19) On April 5, 2002, the Department notified KJ's that, as current owners of the Property, they must comply with the NOI.

(20) On July 7, 2003, the Department issued a Notice of Violation ("NOV") to the Defendants.

The NOV related to petroleum-contaminated soil on the Property and required the Defendants to take the following actions:

(a) Within fifteen (15) days of receipt, submit written verification that a qualified environmental consultant has been retained to prepare a Site Investigation Report and, at the discretion of the Department, a Corrective Action Plan for the remediation and removal of all petroleum products or hazardous materials that exist at the Facility and are contaminating, or threatening to contaminate, the waters of the State; as described in Sections 12.08 through 12.12 of the UST Regulations;

(b) Within fifteen (15) days of receipt, submit documentation of disposal for the contaminated soil that was excavated from the Property during the October 25, 1995 tank removal project;

(c) The site investigation must be conducted and the Site Investigation Report must be prepared in accordance with Sections 12.08 and 12.09 of the UST Regulations and must be submitted within 60 days of receipt. The Site Investigation Report must include the installation and sampling of borings and monitoring wells that complete the delineation of the degree and extent, both on-site and off-site, of soil and groundwater contamination that has resulted from releases at the Facility. All information required to complete the site investigation must be included in the Site Investigation Report, including information that may have previously been submitted to the Department. The Site Investigation Report must include recommendations for corrective action;

(d) The Department will review the Site Investigation Report and may require the submission of additional information, which must be submitted to the Department within fifteen (15) days. When the investigation is complete, the Department may require the development of a Corrective Action Plan, prepared and described in Sections 12.11 and 12.12 of the UST Regulations;

(e) If a Corrective Action Plan is required, it shall be implemented in accordance with the Department approved schedule and the Order of Approval issued by the Department;

(f) Notify the Department – Office of Waste Management – Leaking Underground Storage Tank Program at least forty-eight (48) hours prior to any excavation, well installation, repair or replacement of equipment at the Facility so that a representative of the Department may be present;

(g) Submit quarterly status reports of all investigatory, sampling, and remedial activities that take place at the Facility;

(h) Continue operation of all remediation procedures specified in the Corrective Action Plan and continue submission of required status reports until the Director may determine that the soils and/or groundwater located on and around the Facility have been adequately treated. The Department may require a period of monitoring to ensure that standards have been met. Continue submission of required quarterly status reports until such time that the Department issues written approval for termination of remedial activities at the Facility.

(i) Reimburse the Department for all funds that it has expended or may expend in the investigation and/or remediation of the contamination located at the Facility in accordance with R.I. Gen. Laws § 46-12.5-7; and

(j) Pay an administrative penalty of Thirty-Two Thousand Five Hundred Dollars (\$32,500.00), assessed jointly and severally against each named party.

(21) After being properly served with a copy of the NOV, the Defendants failed to file a written request for an administrative hearing with the Department within the statutorily proscribed 20 day period of time for such request.

(22) On March 22, 2004, a Notice of Final Compliance Order was sent to the Defendants in accordance with R.I. Gen. Laws § 42-17.1-2(21)(v) and 42-17.6-4(b).

(23) On April 28, 2004, a meeting was held between Department representatives, Gullison and Gullison's legal counsel, whereby Gullison agreed to proceed with a site investigation and to submit a Site Investigation Report.

(24) On March 12, 2007, a review of the Department's file revealed that the Defendants did not comply with the requirements in the NOV.

(25) On October 14, 2008, the Department conducted a review of the Property for the purpose of determining the environmental conditions for the Property. A copy of the inspection report,

*“Environmental Conditions for Middletown Tax Assessor’s Plat 115SE, Lot 169A”* is attached hereto as Exhibit “A.”

(26) On January 14, 2010, a Notice of Final Compliance Order was sent to the Defendants in accordance with R.I. Gen. Laws § 42-17.1-2(21)(v) and 42-17.6-4(b).

(27) From at least February 15, 2010 until March 19, 2010 the Department’s legal counsel discussed the requirements of the January 14<sup>th</sup> Notice of Final Compliance Order with the Defendants’ legal counsel.

(28) As of the date of the filing of this Complaint, the Defendants have failed to: (a) comply with the NOV; (b) comply with the Final Compliance Orders; (c) comply with the Department’s order to complete a site investigation and file a Site Investigation Report; and (d) pay the administrative penalty (\$32,500.00) as required by the NOV and the Final Compliance Orders.

### COUNT I

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

(29) Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 27 above.

(30) The NOV issued to the Defendants on or about July 7, 2003 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

(31) 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 DEM’s Administrative Adjudicatory Division by filing a request for hearing within twenty (20) days of service of the NOV.

(32) Defendants, by failing to appeal the issuance of the NOV, are deemed to have waived their right to an adjudicatory hearing resulting in the NOV automatically transforming to a Final

Compliance Order.

(33) Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(v), a Final Compliance Order that has become effective may be enforced through proceedings for injunctive relief wherein the correctness of the compliance order shall be presumed and the party attacking the compliance order shall bear the burden of proof.

(34) Defendants have failed or refused to comply with the requirements of the NOV by either performing the actions required and/or paying the administrative penalty as required therein.

RELIEF REQUESTED

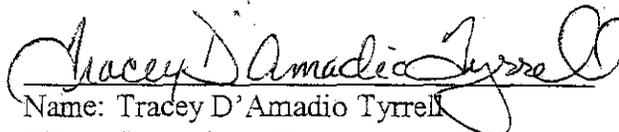
WHEREFORE, the Plaintiff, Janet L. Coit, in her capacity as Director of the Department, hereby requests that this honorable Court enter judgment in the Department's favor and grant the following relief:

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 (See Paragraph no. 21 above);
- B. Within thirty (30) days, submit to DEM all necessary applications, plans, fees and other materials and information necessary to comply with the NOV, and as required by the Department as specified in Paragraph no. 21 above;
- C. Within thirty (30) days, remit to the Department the administrative penalty of Thirty Two Thousand Five Hundred dollars (\$32,500.00) 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, including but not limited to reasonable attorneys' fees associated with the Department's prosecution of the within Complaint.

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 22 day of February, 2011.

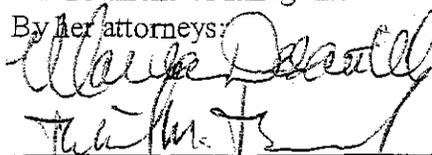


Notary Public

My commission expires: 10.22.14



Respectfully submitted,  
JANET L. COIT,  
in her capacity as DIRECTOR,  
Rhode Island Department of  
Environmental Management  
By her attorneys:



Dated: February 22, 2011

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