

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 15-_____

HAWK ENTERPRISES, INC.,
ELIE N. SAKR and
PIERRE N. SAKR
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 “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 Defendants’ 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.

PARTIES

(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, Hawk Enterprises, Inc., is a Rhode Island domestic profit corporation with a principal place of business at 119 Greenville Avenue in the Town of Johnston, Rhode Island 02919.

(3) Defendant, Elie N. Sakr, is a resident of the State of Rhode Island with an address of 49 Wilson Street in the Town of Johnston, Rhode Island 02919.

(4) Defendant, Pierre N. Sakr, is a resident of the State of Rhode Island with an address of 12 Gamma Court in the Town of North Providence, Rhode Island 02911.

JURISDICTION & VENUE

(5) 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.

(6) 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.

(7) 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

(8) According to the Town of Johnston land evidence records, Defendants, Elie N. Sakr and Pierre N. Sakr, are the owners of record for the subject property (the "Property") which is identified as Johnston Assessor's Map/Plat 17, Lot 126, and is located at 119 Greenville Avenue in the Town of Johnston, Rhode Island.

(9) The Property is operated as a retail gasoline service station and includes six underground storage tanks (“USTs” or “tanks”) which are used for storage of petroleum products and used oil. (the “Facility”).

(10) 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 # 000625.

(11) Hawk Enterprises, Inc. is the operator of the Facility.

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

<u>UST ID No.</u>	<u>Date Installed</u>	<u>Capacity</u>	<u>Substance Stored</u>
001	July 1983	6,000 gallons	Premium Gasoline
002	July 1983	6,000 gallons	Regular Gasoline
003	July 1983	6,000 gallons	Regular Gasoline
004	July 1983	6,000 gallons	Diesel Fuel
005	July 1983	1,000 gallons	Used Oil
006	July 1983	1,000 gallons	No. 2 Fuel Oil

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

(14) On May 5, 2010, the Department sent a Notice of Violation (the “NOV”) to the Defendants via certified mail.

(15) The NOV required the Defendants within sixty (60) days to:

- (a) Modifications shall be made to ensure that the continuous monitoring system (CMS”) is capable of performing valid 0.2-gallon per hour leak tests for UST Nos. 002 and 003 at least once per month in accordance with Rule 8.08(B)(2) of the UST Regulations through the installation of continuous statistical leak detection hardware in the CMS console or by the installation of a siphon-break or solenoid calve between UST Nos. 002 and 003. Any such modifications shall be effectuated in full compliance with the UST Regulations. Written verification of compliance shall be submitted to DEM along with copies of valid 0.2-gallon per hour leak test reports for UST Nos. 002 and 003 for tests performed after the modification(s);
- (b) Submit written verification to DEM that a valid 0.2-gallon per hour leak test has been performed on UST No. 001 within the last thirty (30) days, in accordance

with Rule 8.08(B)(2) of the UST Regulations;

- (c) Submit written verification to DEM that you are not compiling and maintaining inventory control records for UST Nos. 001, 002, 003 and 004 that are consistent with the requirements of Rules 8.08(B)(3) and 11.03 of the UST Regulations;
 - (d) Procure the services of a licensed tightness tester to perform tank tightness testing for UST Nos. 001, 002, 003, 04, and 005 in accordance with Rules 8.08(B)(4), 8.08(2)(b)(1) and 8.10 of the UST regulations and submit copies of the tank tightness testing reports to DEM;
 - (e) Submit written verification to DEM that you are now compiling and maintaining manual tank gauging records for UST No. 005 in accordance with Rules 8.08(2)(b)(2) of the UST Regulations;
 - (f) Submit written verification to DEM that the owner or operator is now performing monthly functionality testing of the CMS and maintaining a record of such in accordance with Rules 8.15€ and 11.02(B)(3) of the UST Regulations;
 - (g) Perform a groundwater evaluation in accordance with Rule 8.19€ of the UST Regulations and submit a copy of the evaluation report to DEM;
 - (h) Pay the administrative penalty of twenty-eight thousand eight hundred and thirty-five (\$28, 835.00) dollars.
- (16) The Defendants failed to request an administrative hearing, 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.
- (17). The Property continues to be owned by the Defendants, Elie N. Sakr and Pierre N. Sakr and the Facility continues to be operated by Hawk Enterprises, Inc.
- (18) Since the NOV was issued and became a Final Compliance Order, the Defendants have failed to comply with the Order and the terms of the NOV.
- (19) The Defendants' failure to comply with the NOV represents a continuing violation of the Department's UST Regulations.
- (20) 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 Order; and (c) pay the administrative penalty of twenty-eight thousand eight hundred and thirty-five (\$28,835.00) dollars as required by the NOV and the Final Compliance Order.

COUNT I

(Violation of Final Compliance Order)

(21) Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 20 above.

(22) The NOV issued to the Defendants on or about May 5, 2010 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

(23) 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.

(24) 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 transforming in to a Final Compliance Order of the Department.

(25) 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.

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

(27) 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 (as noted no. 15 above) within sixty days (60) days:
 - a. Modifications shall be made to ensure that the continuous monitoring system (CMS") is capable of performing valid 0.2-gallon per hour leak tests for UST Nos. 002 and 003 at least once per month in accordance with Rule 8.08(B)(2) of the UST Regulations through the installation of continuous statistical leak detection hardware in the CMS console or by the installation of a siphon-break or solenoid calve between UST Nos. 002 and 003. Any such modifications shall be effectuated in full compliance with the UST Regulations. Written verification of compliance shall be submitted to DEM along with copies of valid 0.2-gallon per hour leak test reports for UST Nos. 002 and 003 for tests performed after the modification(s);
 - b. Submit written verification to DEM that a valid 0.2-gallon per hour leak test has been performed on UST No. 001 within the last thirty (30) days, in accordance with Rule 8.08(B)(2) of the UST Regulations;
 - c. Submit written verification to DEM that you are not compiling and maintaining inventory control records for UST Nos. 001, 002, 003 and 004 that are consistent with the requirements of Rules 8.08(B)(3) and 11.03 of the UST Regulations;
 - d. Procure the services of a licensed tightness tester to perform tank tightness testing for UST Nos. 001, 002, 003, 04, and 005 in accordance with Rules 8.08(B)(4), 8.08€(2)(b)(1) and 8.10 of the UST regulations and submit copies of the tank tightness testing reports to DEM;

- e. Submit written verification to DEM that you are now compiling and maintaining manual tank gauging records for UST No. 005 in accordance with Rules 8.08(2)(b)(2) of the UST Regulations;
 - f. Submit written verification to DEM that the owner or operator is now performing monthly functionality testing of the CMS and maintaining a record of such in accordance with Rules 8.15€ and 11.02(B)(3) of the UST Regulations;
 - g. Perform a groundwater evaluation in accordance with Rule 8.19€ of the UST Regulations and submit a copy of the evaluation report to DEM;
- B. If Defendants fail to abide by the terms of paragraph A, as stated above within sixty (60) days, then the Defendants shall be restrained and enjoined from operating any business on the Property until such time as they are in compliance with the UST Regulations as stated above;
- C. Within thirty (30) days, remit to the Department the administrative penalty of Twenty-Eight Thousand Eight Hundred and Thirty-Five (\$28,8350.00) 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 August, 2015.

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: August ____, 2015

/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