

SUPERIOR COURT

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vs.

C.A. No. PC 22-

Defendants

A. INTRODUCTION

This matter arises as a result of Defendants’ violations of the *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials*, 250-RICR-140-25-1 (the “UST Regulations”)¹ promulgated pursuant to R.I. Gen. Laws § 46-12-3(21). As a result of those violations, on March 30, 2018, the Rhode Island Department of Environmental Management (“RIDEM” or the “Department”) issued a Notice of Violation (hereinafter the “NOV”). The NOV relates to the Defendants’ failure to submit proof of safety testing on regulated underground storage tanks (USTs) and failure to permanently close abandoned USTs in accordance with the UST Regulations.

B. PARTIES

¹ The applicable UST Regulations are those that were in effect as of the date of the NOV. See Regulation #DEM-OWM-UST03-11 (effective 4/26/2011 to 11/20/2018) (available at <https://risos-apa-production-public.s3.amazonaws.com/DEM/6389.pdf>).

1. Plaintiff, Terrence Gray, is the duly appointed Director of the RIDEM, whose offices are located at 235 Promenade Street, Providence, Rhode Island.
2. Defendants Pasco Raimondo and Susan Raimondo are the owners of the Property that is the subject of the NOV and this action.

C. JURISDICTION & VENUE

3. Subject matter jurisdiction in this case is properly conferred in the Court pursuant to R.I. Gen. Laws §§ 8-2-13, 42-17.1-2(21)(vi), and 42-17.6-4(c).
4. Personal jurisdiction over the Defendants is properly conferred in this Court based on Defendants' operation of business and ownership of real property within the State of Rhode Island.
5. Venue is properly placed in this Court pursuant to R.I. Gen. Laws §§ 9-4-3 and 42-17.6-4(c).

D. FACTS

6. The subject property (the "Property") is located at 94 West Warwick Avenue, in the Town of West Warwick, Rhode Island, and is also identified by the Town of West Warwick as Assessor's Plat 7, Lot 399.
7. The Property includes a service station and a motor fuel storage and dispensing system (the "Facility"), operated by Defendants d/b/a "Pat's Service."
8. According to the Town of West Warwick Tax Assessor Database, Defendants own the Property.
9. Defendants hold Underground Storage Tank Facility Certificate of Registration No. 2081 for Tanks No. 5, 9, 10, 11, and 2, containing gasoline.

10. On March 30, 2018, RIDEM issued a NOV to the Defendants alleging violations of the UST Regulations for the failure to submit proof of safety testing on regulated USTs and failure to permanently close abandoned USTs, in violation of UST Regulations Rules 8.10(D), 8.11, 12.02, 12.04(C), 12.07, 13.02, and 13.05.
11. On or about April 6, 2018, the NOV was delivered to the Defendants, as evidenced by the United States Postal Service Certified Mail Domestic Return Receipt and USPS Tracking.
12. Pursuant to § 42-17.1-2(31), on April 5, 2018, the NOV was recorded in the Land Evidence Records of the Town of West Warwick, Instr. # 2483-1345.
13. The Defendants did not request an administrative hearing to contest the NOV.
14. The NOV imposed an administrative penalty of \$25,486.
15. The NOV ordered certain compliance terms to permanently close the subject USTs.

Specifically, the Order requires the following:

- a. Within 30 days of receipt of the NOV, submit a completed *Permanent Closure Application for Underground Storage Tanks* (the “Closure Application”) to the DEM. The Closure Application must include a *Release Characterization Report* for the Failed Pipeline in accordance with Rules 12.04(C) and 12.07 of the DEM’s UST Regulations and payment for all past due UST registration and late fees.
- b. Within 30 days of approval of the Closure Application by the DEM, complete the permanent closure of the USTs. The permanent closure shall be completed in full compliance with Section 13.00 of the DEM’s UST Regulations.
- c. Within 30 days of the removal of the USTs, submit to the DEM a *Closure Assessment Report* (the “Closure Report”) that has been prepared by an environmental consultant in accordance with Section 13.11 of the DEM’s UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, and Section 13 of the DEM’s *Oil Pollution Control Regulations*.
- d. Within 30 days of the removal of the USTs, remove and properly dispose of any contaminated soil encountered during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to the DEM.

- e. Based on the information in the Closure Report, the DEM may require that a site investigation be performed by an environmental consultant and that a *Site Investigation Report* (“SIR”) be submitted in accordance with Rules 12.08, 12.09, and 12.10 of the DEM’s UST Regulations and within a time frame specified by the DEM. In the event that the DEM requires a SIR, Respondents shall complete the SIR as ordered. Based on the information in the SIR, the DEM may require submittal of a *Corrective Action Plan* (“CAP”) within a time frame specified by the DEM and in accordance with Rules 12.12 through 12.18 of the DEM’s UST Regulations. The CAP shall be implemented in accordance with an *Order of Approval* issued by the DEM.

16. Because the Defendants failed to request an administrative hearing, the NOV and associated administrative penalty contained within automatically became a Compliance Order enforceable in Superior Court pursuant to R.I. Gen. Laws §§ 42-17.1-2(21)(vi) and 42-17.6-4(c).

17. As of the date of this Complaint, the Defendants have failed to fully comply with the terms of the Compliance Order.

18. The non-compliance poses a serious environmental risk. Failure to comply with the regulatory requirements could allow a compromised pipeline to remain in use and result in a release of petroleum product to the environment and the resultant threats to soil, groundwater resources, and public health and safety.

COUNT I

(Violation of a Compliance Order)

19. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 18 above.

20. The NOV was properly issued in accordance with R.I. Gen. Laws § 42-17.1-2(21).

21. The NOV was properly served in accordance with R.I. Gen. Laws § 42-17.1-2(21)(i).

22. In accordance with R.I. Gen. Laws § 42-17.1-2(21)(i), the NOV notified the Defendants of the facts that gave the Department reasonable grounds to believe that a violation of law

had occurred; of the statutes and/or regulation(s) violated; and of the Defendants' right to request an administrative hearing before the Department's Administrative Adjudication Division by filing a request for hearing with twenty (20) days of service of the NOV.

23. Defendants did not request a hearing.
24. Pursuant to R.I. Gen. Laws § 42-17.6-4(c) and § 42-17.1-2(21)(i), the Defendants' failure to appeal the issuance of the NOV and the administrative penalty, is deemed to have waived Defendants' rights to an adjudicatory hearing resulting in the NOV automatically transforming into a Compliance Order of the RIDEM and the proposed administrative penalty becomes final.
25. Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi), a Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Compliance Order rests with the Defendants.
26. As of the date of filing this Complaint, the Defendants have failed to comply with the provisions of the Compliance Order.

COUNT II

(Violation of a Compliance Order Administrative Penalties)

27. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 26 above.
28. The NOV was properly issued in accordance with R.I. Gen. Laws § 42-17.1-2(21).
29. The NOV was properly served in accordance with R.I. Gen. Laws § 42-17.1-2(21)(i).
30. The administrative penalty assessed in the NOV issued to the Defendants was assessed pursuant to R.I. Gen. Laws § 42-17.6-3.

31. 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 RIDEM's Administrative Adjudicatory Division by filing a request for hearing within twenty (20) days of service of the NOV and that the failure to request a hearing in the time prescribed would result in the associated administrative penalty proposed becoming final; and the manner of payment thereof.
32. Defendants did not request a hearing.
33. Pursuant to R.I. Gen. Laws § 42-17.6-4(c) and § 42-17.1-2(21)(i), the Defendants' failure to appeal the issuance of the NOV and the administrative penalty, is deemed to have waived Defendants' rights to an adjudicatory hearing resulting in the NOV automatically transforming into a Compliance Order of the RIDEM and the proposed administrative penalty becomes final.
34. Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi), a Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Compliance Order rests with the Defendant.
35. Pursuant to R.I. Gen. Laws § 42-17.6-4(c), if a person waives their right to a hearing on an administrative penalty, it is enforceable in the Superior Court through injunctive proceedings.
36. Defendant has failed to pay the administrative penalty assessed in the NOV.

WHEREFORE, Plaintiff, Terrance Gray, in his capacity as Director of the Rhode Island Department of Environmental Management, hereby requests that Judgment be entered in favor of

the Plaintiff and that the Plaintiff be granted the following relief to achieve compliance with the terms of the NOV:

1. Permanent Injunctive Relief, ordering Defendants to:
 - a. Within 30 days, submit a completed *Permanent Closure Application for Underground Storage Tanks* (the “Closure Application”) to the DEM. The Closure Application must include a *Release Characterization Report* for the Failed Pipeline in accordance with Section 1.10(H) and Section 1.14(G) of the DEM’s UST Regulations and payment for all past due UST registration and late fees.
 - b. Within 90 days of approval of the Closure Application by the DEM, complete the permanent closure of the USTs. The permanent closure shall be completed in full compliance with Section 1.15 of the DEM’s UST Regulations.
 - c. Within 30 days of the removal of the USTs, submit to the DEM a *Closure Assessment Report* (the “Closure Report”) that has been prepared by an environmental consultant in accordance with Section 1.15(D)(10) of the DEM’s UST Regulations, the *UST Closure Assessment Guidelines*, and Section 2.13 of the DEM’s *Oil Pollution Control Regulations*.
 - d. Within 30 days of the removal of the USTs, remove and properly dispose of any contaminated soil encountered during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to the DEM.
 - e. If DEM requires, based on review of the Closure Assessment Report, that a site investigation be performed by an environmental consultant and that a *Site Investigation Report* (“SIR”) be submitted in accordance with Section 1.14(H) of the DEM’s UST Regulations, said SIR shall be submitted within 30 days. If DEM requires, based on the information in the SIR, the submittal of a *Corrective Action Plan* (“CAP”), said CAP shall be submitted within 30 days and in accordance with Section 1.14(I) of the DEM’s UST Regulations. The CAP shall be implemented in accordance with an *Order of Approval* issued by the DEM.
2. Award of Administrative Penalty, ordering Defendants to pay the full amount of \$25,486 to the Plaintiff, which is the amount of the administrative penalty assessed in the NOV; and
3. Such further relief as this Court deems just and equitable in accordance with the facts of this case.

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VERIFICATION

I, Tracey Tyrrell, Supervising Environmental Scientist of Rhode Island Department of Environmental Management's Office of Compliance and Inspection and an authorized representative of the Director, first being duly sworn upon oath, hereby state that the facts contained in this Complaint to the best of my knowledge and belief, true and accurate.

For the Director,

By: _____
TRACEY TYRRELL
Supervising Environmental Scientist
Office of Compliance and Inspection
Dated: November __, 2022.

STATE OF RHODE ISLAND PROVIDENCE COUNTY

Subscribed and sworn to before me this ____ day of November, 2022.

NOTARY PUBLIC
My commission expires: _____

Submitted by:
Terrence Gray,
in his capacity as Director,
RHODE ISLAND DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By his attorney,

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