STATE OF RHODE ISLAND **SUPERIOR COURT**
PROVIDENCE, SC.

TERRENCE GRAY,	:	
in his capacity as Director,	:	
RHODE ISLAND DEPARTMENT OF	:	
ENVIRONMENTAL MANAGEMENT	:	
	:	
Plaintiff,	:	
	:	
vs.	:	**C.A. No. PC 24-_____**
	:	
FIVE STAR AUTO SALVAGE, INC.	:	
	:	
	:	
Defendant	:	

VERIFIED COMPLAINT AND
PETITION TO ENFORCE A FINAL COMPLIANCE ORDER

A. INTRODUCTION

1. This matter arises as a result of Defendant's violations of the Rules and Regulations for Hazardous Waste Management ("Hazardous Waste Regulations") promulgated and administered by the Rhode Island Department of Environmental Management (RIDEM). RIDEM initiated an administrative enforcement action by issuing a Notice of Violation (hereinafter the "NOV") to the Defendant on September 20, 2018. This Verified Complaint seeks to enforce the NOV as a Final Compliance Order.

B. PARTIES

2. Plaintiff, Terrence Gray, is the duly appointed Director of RIDEM, whose offices are located at 235 Promenade Street, Providence, Rhode Island.
3. Defendant Five Star Auto Salvage, Inc. is a domestic profit corporation with its principal office located at 1348 Douglas Pike in the Town of Smithfield, Rhode Island.

C. JURISDICTION & VENUE

4. Subject matter jurisdiction in this case is properly conferred in this Court pursuant to R.I. Gen. Laws §§ 8-2-13, 42-17.1-2(21)(vi), and 42-17.6-4(c).
5. Personal jurisdiction over the Defendant is properly conferred in this Court based on Defendant's operation of business and ownership of real property within the State of Rhode Island.
6. Venue is properly placed in this Court pursuant to R.I. Gen. Laws §§ 9-4-3 and 42-17.6-4(c).
7. **FACTS**
8. The subject property (the "Property") is located at 1348 Douglas Pike in the Town of Smithfield, Rhode Island.
9. The Property includes a facility used for the general maintenance of automobiles and an auto salvage yard (the "Facility").
10. On September 20, 2018, RIDEM issued the NOV to the Defendant alleging violations of the Hazardous Waste Regulations.
11. As evidenced by the Domestic Return Receipt (green card), the NOV was delivered by certified mail to the Defendant's registered agent.
12. The Defendant did not request an administrative hearing to contest the NOV.
13. The NOV imposed an administrative penalty of $12,500.
14. The NOV ordered certain compliance terms to address the environmental violations, including:
    a. Label the Above Ground Storage Tank (AST) and all containers holding used oil with the words "used oil;"
    b. Ship all universal waste mercury switches to an authorized destination facility and

within 10 days of the shipment submit a copy of the bill of lading documenting the shipment to the DEM's Office of Compliance and Inspection.

15. Because the Defendant 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).
16. RIDEM conducted an inspection of the Facility on February 22, 2024. The results show that the Defendant has failed to fully comply with the above-cited provisions of the Order in that the AST and other containers still lack the proper labeling and universal mercury waste is still being stored for greater than a year in violation of the applicable Hazardous Waste Regulations.
17. Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens.
18. Mercury is known to cause damage to the respiratory and nervous systems.
19. The requirement to label ASTs and containers holding used oil is an integral part of the regulatory program because this requirement reduces the potential for mismanagement of waste. Proper labeling provides valuable information regarding the chemical properties of the waste for emergency responders who may be alle to a facility during a fire, spill or release.

COUNT I

(Violation of a Compliance Order)

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

21. The NOV was properly issued in accordance with R.I. Gen. Laws § 42-17.1-2(21).
22. The NOV was properly served in accordance with R.I. Gen. Laws § 42-17.1-2(21)(i).
23. In accordance with R.I. Gen. Laws § 42-17.1-2(21)(i), the NOV notified the Defendant of the facts that gave RIDEM reasonable grounds to believe that a violation of law had occurred; of the statutes and/or regulation(s) violated; and of the Defendant's right to request an administrative hearing before RIDEM's Administrative Adjudication Division by filing a request for hearing with twenty (20) days of service of the NOV.
24. Defendant did not request a hearing.
25. Pursuant to R.I. Gen. Laws § 42-17.6-4(c) and § 42-17.1-2(21)(i), the Defendant's failure to appeal the issuance of the NOV and the administrative penalty, is deemed to have waived Defendant's right to an adjudicatory hearing resulting in the NOV automatically becoming a Compliance Order of the RIDEM and the proposed administrative penalty becomes final.
26. 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.
27. As of the date of filing this Complaint, the Defendant has failed to fully comply with the provisions of the Compliance Order.

COUNT II

(Violation of a Compliance Order Administrative Penalty)

28. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 27 above.
29. The NOV was properly issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

30. The NOV was properly served in accordance with R.I. Gen. Laws § 42-17.1-2(21)(i).
31. The administrative penalty assessed in the NOV was assessed pursuant to R.I. Gen. Laws § 42-17.6-3.
32. In accordance with R.I. Gen. Laws § 42-17.6-3(a), the NOV notified the Defendant 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 Defendant's 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.
33. Defendant did not request a hearing.
34. Pursuant to R.I. Gen. Laws § 42-17.6-4(c) and § 42-17.1-2(21)(i), the Defendant's failure to appeal the issuance of the NOV and the administrative penalty, is deemed to have waived Defendant's rights to an adjudicatory hearing resulting in the NOV automatically becoming a Compliance Order of the RIDEM and the proposed administrative penalty becomes final.
35. 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.
36. 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.
37. Defendant has failed to pay the administrative penalty assessed in the NOV.

WHEREFORE, Plaintiff 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 Defendant to:
    a. Label the Above Ground Storage Tank (AST) and all containers holding used oil with the words "used oil;"
    b. Ship all universal waste mercury switches to an authorized destination facility and within 10 days of the shipment submit a copy of the bill of lading documenting the shipment to the DEM's Office of Compliance and Inspection.
2. Award of Administrative Penalty, ordering Defendant to pay the full amount of $12,500 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.

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: _____.

STATE OF RHODE ISLAND
PROVIDENCE COUNTY

Subscribed and sworn to before me this ___ day of _____, 20__.

_____
NOTARY PUBLIC
My commission expires:
_____

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

By his attorney,

/s/ Jenna Giguere, Esq. (#8744)
RIDEM Office of Legal Services
235 Promenade Street, Fourth Floor
Providence, RI 02908
(401) 537-4409
jenna.giguere@dem.ri.gov