

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Gordon Realty, Inc. and
 Richmond Airport, Inc.**

FILE NO.: OCI-UST-19-27-02123

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

On 10 May 2019, DEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondents for the violations that are the subject of this *Notice of Violation* (“NOV”). The NIE was delivered to Gordon Realty, Inc. and Richmond Airport, Inc. on 15 May 2019 and 18 May 2019, respectively. Respondents failed to respond to or comply with the NIE.

C. Facts

- (1) The subject property is located at 23 Heaton Orchard Road in the Town of Richmond, Rhode Island, otherwise identified as Richmond Tax Assessor’s Plat 7E, Lot 26 (the “Property”). The Property includes an airport and a motor fuel storage and dispensing system (the "Facility").
- (2) Respondent Gordon Realty, Inc. owns the Property.
- (3) Respondent Richmond Airport, Inc. operates the Facility.
- (4) Respondents are the owners and operators of an underground storage tank (“UST” or “tank”) that is located on the Property, which tank is used for storage of petroleum product and which is subject to the Rhode Island Code of Regulations titled *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* (the “UST Regulations”).
- (5) The Facility is registered with DEM and is identified as UST Facility No. 02123.

- (6) The UST is registered with DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
002	10 December 1990	10,000 gallons	Aviation Gasoline

- (7) The secondary product pipeline for UST No. 002 is double walled.
- (8) On 6 May 2019, DEM performed a compliance inspection of the Facility and was informed that the secondary product pipeline for UST No. 002 had not been tested for tightness within the last two years. Tightness test reports for the secondary product pipelines for the years 2010, 2012, 2014, 2016 and 2018 have not been received by DEM in accordance with Part 1.10(H)(4) of the UST Regulations.
- (9) Upon information and belief, it is not possible to test the secondary product pipeline for UST No. 002 for tightness as the piping is not equipped with test boots.
- (10) As of the date of the NOV, Respondents are continuing to operate UST No. 002.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **UST Regulations, Rule 8.09(A)(2) [recently amended to Part 1.10(G)(2)(b)]** – requiring tightness testing of double walled secondary product pipelines, by DEM-licensed tightness testers, at 20 years of age and every 2 years thereafter.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **IMMEDIATELY upon receipt of the NOV**, remove UST No. 002 from service and cease and desist from dispensing fuel from the UST.
- (2) **Within 7 days of receipt of the NOV**, procure the services of a qualified contractor to evacuate the contents of UST No. 002 and its product pipeline. The tank shall be evacuated to 1 inch or less of liquid at the bottom of the tank and the fill port shall be locked. In accordance with Part 1.15(C) of the UST Regulations, complete and submit an *Underground Storage Tank Temporary Closure Application* to DEM's Office of Waste Management ("OWM"). Written verification of compliance shall be submitted to DEM's Office of Compliance and Inspection ("OC&I").

- (3) **If OWM approves the temporary closure, then, within 1 year of receipt of the NOV**, the product pipeline for UST No. 002 shall be modified to allow for interstitial space tightness testing or replaced with a new double-walled pipeline in full compliance with the Part 1.11 and/or Part 1.12 of the UST Regulations. Any modification to the existing pipeline or installation of new product piping shall only be completed with prior written notification to and approval by DEM, as per Part 1.11 and Part 1.12 of the UST Regulations.
- (4) **If OWM approves the temporary closure and UST No. 002 is not returned to service within 1 year of receipt of the NOV** (with a new or modified double-walled product pipeline), submit a completed *Permanent Closure Application for USTs* to OWM and, **with OWM's consent and approval, complete the permanent closure of UST No. 002** in accordance with Part 1.15 of the UST Regulations. The permanent closure of the UST shall be completed within 410 days of receipt of the NOV.
- (5) **Within 30 days of the removal of the UST**, complete and submit to OWM a *Closure Assessment Report* (the "Closure Assessment") in accordance with Part 1.15(D)(10) of the UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, and Part 2.13 of the Rhode Island Code of Regulations titled *Oil Pollution Control Regulations (250-RICR-140-25-2)* (the "OPC Regulations").
- (6) **Within 30 days of the removal of the UST**, remove and properly dispose of any contaminated soil encountered during the closure and within 10 days of the soil disposal, submit documentation of disposal to OWM, in accordance with Part 2.13 of the OPC Regulations.
- (7) If, after review of the Closure Assessment, DEM determines that a Site Investigation (the "SI") is required, complete the SI and submit a Site Investigation Report (the "SIR") to DEM in accordance with Part 1.14(H) of the UST Regulations within the time frame specified by DEM.
- (8) If, after review of the SIR, DEM determines that a Corrective Action Plan (the "CAP") is required, complete a CAP in accordance with Part 1.14(I) of the UST Regulations within the time frame specified by DEM. The CAP must be implemented in accordance with any Order of Approval issued by DEM.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$3,194

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a check made payable to the “General Treasury - Water & Air Protection Program Account,” and shall be forwarded to DEM’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if DEM determines that reasonable efforts have been made to comply promptly with the NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, Suite 350
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (2) A copy of each request for hearing must also be forwarded to:
- Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, Suite 425
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
 - (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
 - (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
 - (6) An original signed copy of the NOV is being forwarded to the Town of Richmond, Rhode Island, wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 42-17.1-2 (31), as amended.
 - (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Joseph J. LoBianco's of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

By: _____
David E. Chopy, Administrator
Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Gordon Realty, Inc.
c/o Clyde B. Gordon, Jr., Registered Agent
23 Heaton Orchard Road
West Kingston, RI 02892

Richmond Airport, Inc.
c/o Clyde B. Gordon, Jr., Registered Agent
23 Heaton Orchard Road
West Kingston, RI 02892

R.I. 0288

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: UST

File No.: OCI-UST-19-27-02123

Respondents: Gordon Realty, Inc. and Richmond Airport, Inc.

GRAVITY OF VIOLATION SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) – Piping Testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$2,500	1 violation	\$2,500
<i>SUB-TOTAL</i>					\$2,500

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE			
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:			
- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
<p>Failing to test the piping for tightness during the year 2010. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C Corp.</p> <p>\$170</p> <p>December 2010</p> <p>1 November 2019</p> <p>1 October 2019</p> <p>7.5%</p>	<p>\$170</p>
<p>Failing to test the piping for tightness during the year 2012. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C Corp.</p> <p>\$170</p> <p>December 2012</p> <p>1 November 2019</p> <p>1 October 2019</p> <p>7.4%</p>	<p>\$150</p>
<p>Failing to test the piping for tightness during the year 2014. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense 	<p>C Corp.</p> <p>\$170</p>	<p>\$132</p>

ADMINISTRATIVE PENALTY SUMMARY (continued)

<p>economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> ▪ First Month of Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>December 2014 1 November 2019 1 October 2019 7.6%</p>	
<p>Failing to test the piping for tightness during the year 2016. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C Corp. \$170 December 2016 1 November 2019 1 October 2019 7.5%</p>	<p>\$111</p>
<p>Failing to test the Piping for tightness during the year 2018. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C Corp. \$170 December 2018 1 November 2019 1 October 2019 8.1%</p>	<p>\$131</p>
SUB-TOTAL			<p>\$694</p>

ADMINISTRATIVE PENALTY SUMMARY (continued)

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$3,194

PENALTY MATRIX WORKSHEET

CITATION: Piping Testing
 VIOLATION NO.: D (1)

TYPE		
<u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> X </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<u>FACTORS CONSIDERED:</u>		
<p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i>.</p>		
<p>(1) The extent to which the act or failure to act was out of compliance: Respondents failed to have the secondary product pipeline tested for tightness by a DEM-licensed tightness tester during each of the years 2010, 2012, 2014, 2016 and 2018. Failure to comply reduces the likelihood of detecting or preventing releases of the regulated substance to the environment and the resultant threats to groundwater resources and public health and safety.</p>		
<p>(2) Environmental conditions: The Facility is located in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment, and which are located in wellhead protection areas for community water supply wells, groundwater reservoirs and portions of their recharge areas and groundwater dependent areas. The UST is installed within 1,200 feet of the wellhead protection area for a non-community water supply well, in a groundwater recharge area, in a sole source aquifer and within 1,300 feet of a groundwater reservoir. The UST is installed within 370 feet of regulated freshwater wetlands and within 1,200 feet of a tributary of Beaver River. The UST is installed in the Usquepaug River watershed.</p>		
<p>(3) Amount of the pollutant: Considered, but not utilized for this calculation.</p>		
<p>(4) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Aviation gasoline can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. Benzene, a component of aviation gasoline, is a known carcinogen.</p>		
<p>(5) Duration of the violation: Respondents have been in violation of this requirement since 10 December 2010.</p>		
<p>(6) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to prevent the non-compliance by having the secondary pipelines tested for tightness during each of the years 2010, 2012, 2014, 2016 and 2018. Other than unsuccessfully attempting to install test boots on the piping by themselves, Respondents have yet to take any steps to mitigate the non-compliance, despite being put on notice by DEM.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for their failure to comply with the requirements set forth in the UST Regulations. Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u>X</u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250