



3. Defendant Gordon Realty, Inc. is a domestic profit corporation with its principal office located at 23 Heaton Orchard Road in the Town of Richmond, Rhode Island.
4. Defendant Richmond Airport, Inc. is a domestic profit corporation with its principal office located at 23 Heaton Orchard Road in the Town of Richmond, Rhode Island.

**C. JURISDICTION & VENUE**

5. 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).
6. 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.
7. Venue is properly placed in this Court pursuant to R.I. Gen. Laws §§ 9-4-3 and 42-17.6-4(c).

**D. FACTS**

8. The subject property (the "Property") is located at 23 Heaton Orchard Road in the Town of Richmond, Rhode Island, and is also identified by the Town of Richmond as Assessor's Plat 7E, Lot 26.
9. The Property includes an airport and a motor fuel storage and dispensing system (the "Facility").
10. According to the Town of Richmond Tax Assessor Database and Land Evidence Records (Book 224, Page 591), Defendant Gordon Realty, Inc. owns the Property.
11. Defendant Richmond Airport, Inc. holds Underground Storage Tank Facility Certificate of Registration No. 2123 for Tank No. 2, containing gasoline, with a capacity of 10,000 gallons.

12. On January 9, 2020, RIDEM issued the NOV to the Defendants alleging violations of the UST Regulations for the failure to submit proof of tightness testing in accordance with the UST Regulations, specifically citing Section 1.10(G)(2)(b) of the UST Regulations.
13. On or about January 16, 2020, the NOV was delivered, through Defendants' Registered Agent, Clyde B. Gordon Jr., as evidenced by the United States Postal Service Certified Mail Domestic Return Receipt and USPS Tracking.
14. Pursuant to § 42-17.1-2(31), on January 30, 2020, the NOV was recorded in the Land Evidence Records of the Town of Richmond, Book 334, Page 86.
15. The Defendant did not request an administrative hearing to contest the NOV.
16. The NOV imposed an administrative penalty of \$3,194.
17. The NOV ordered certain compliance terms to remove the subject UST from service and evacuate its contents. Specifically, the Order requires the following:
  - a. IMMEDIATELY upon receipt of the NOV, remove UST No. 002 from service and cease and desist from dispensing fuel from the UST.
  - b. 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").
  - c. 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.
  - d. 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.

- e. 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”).
  - f. 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.
  - g. 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.
  - h. 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.
18. 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).
19. As of the date of this Complaint, the Defendants have failed to fully comply with the terms of the Compliance Order.
20. The non-compliance poses a serious environmental risk. Failure to comply with tightness testing regulations reduces the likelihood of detecting or preventing releases of the regulated substance to the environment and the resultant threats to soil, groundwater resources and public health and safety.

## **COUNT I**

### *(Violation of a Compliance Order)*

21. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 20 above.
22. The NOV was properly issued in accordance with R.I. Gen. Laws § 42-17.1-2(21).
23. The NOV was properly served in accordance with R.I. Gen. Laws § 42-17.1-2(21)(i).
24. 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.
25. Defendants did not request a hearing.
26. 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.
27. 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.
28. 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)*

29. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 28 above.
30. The NOV was properly issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).
31. The NOV was properly served in accordance with R.I. Gen. Laws § 42-17.1-2(21)(i).
32. The administrative penalty assessed in the NOV was assessed pursuant to R.I. Gen. Laws § 42-17.6-3.
33. In accordance with R.I. Gen. Laws § 42-17.6-3(a), the 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.
34. Defendants did not request a hearing.
35. 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.
36. 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.

37. 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.

38. 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. Immediately remove UST No. 002 from service and cease and desist from dispensing fuel from the UST.
- b. Procure the services of a qualified contractor to evacuate the contents of UST No. 002 and its product pipeline within 30 days. 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 Section 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").
- c. If OWM approves the temporary closure, then, within 1 year, 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 Section 1.11 and/or Section 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 Section 1.11 and Section 1.12 of the UST Regulations.
- d. If OWM approves the temporary closure and UST No. 002 is not returned to service by November 1, 2023, (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 Section 1.15 of the UST Regulations by February 1, 2024.
  - i. Within 30 days of the removal of the UST, complete and submit to OWM a *Closure Assessment Report* (the "Closure Assessment") in accordance with Section 1.15(D)(10) of the UST Regulations, the UST *Closure Assessment Guidelines* and Section 2.13 of the *Oil Pollution Control Regulations* (250-RICR-140-25-2) (the "OPC Regulations").

- ii. 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 Section 2.13 of the OPC Regulations.
  - iii. 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 Section 1.14(H) of the UST Regulations within 30 days.
  - iv. If, after review of the SIR, DEM determines that a Corrective Action Plan (the “CAP”) is required, complete a CAP in accordance with Section 1.14(I) of the UST Regulations within 30 days. The CAP must be implemented in accordance with any Order of Approval issued by DEM.
2. Award of Administrative Penalty, ordering Defendants to pay the full amount of three thousand one hundred and ninety-four dollars (\$3,194) 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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