



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

OCT 26 2017

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7016 3560 0000 4255 3104**

Michael A. Newcomb, President  
Newcomb Oil Co., Inc.  
4 Schoen Place  
Pittsford, NY 14534

Re: Underground Storage Tank (UST) Compliance Inspections of  
UST Facilities Owned/Operated by Newcomb Oil Co., Inc.:

Newcomb Pittsford Village Mart, 57 North Main St., Pittsford, NY; PBS# 8-226335  
Newcomb Elmgrove, 2960 Buffalo Road, Rochester, NY; PBS # 8-381225  
Newcomb Oil Eastview, 8025 Victor-Pittsford Road, Victor, NY; PBS #: 8-381233  
Newcomb Wayneport, 337 Route 31, Macedon, NY; PBS#: 8-600520

Expedited Settlement Agreement  
Docket No. RCRA-02-2017-7705

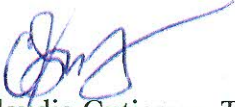
Dear Mr. Newcomb:

The U.S. Environmental Protection Agency (EPA) Region 2 is in receipt of Newcomb Oil, Inc.'s penalty payment of \$3,400, the signed Expedited Settlement Agreement, and the documentation that the USTs at the above referenced facilities are now in compliance. By signing the Expedited Settlement Agreement, you have agreed to the terms of the Expedited Settlement Agreement and Final Order and have certified that all violations cited in the proposed Expedited Settlement Agreement were corrected.

Enclosed you will find a copy of the Expedited Settlement Agreement and Final Order issued by EPA. EPA has approved the Expedited Settlement Agreement based on your signed certification and supporting compliance documentation. EPA will take no further civil action against you for the violations listed in Proposed Expedited Settlement Agreement provided that all listed violations were timely corrected. EPA may choose to re-inspect the USTs located at Newcomb Oil, Inc.'s facilities and if EPA identifies any violations of federal UST regulations during the re-inspection or from any other information obtained by EPA, such findings would be Newcomb Oil, Inc.'s second violation of federal underground storage tank (UST) regulations. A second offense may result in a civil or judicial action which can include seeking penalties of up to \$22,587 per UST system per day of violation.

If you have any questions regarding this letter or any other related matter, please contact Paul Sacker of my staff at (212) 637-4237 or by e-mail at [sacker.paul@epa.gov](mailto:sacker.paul@epa.gov). Thank you for your cooperation.

Sincerely,



Claudia Gutierrez, Team Leader  
UST Team

Enclosure

cc: Russ Brauksieck  
NYSDEC  
Chief – Facility Compliance Section  
Division of Environmental Remediation  
625 Broadway 11th Floor  
Albany, NY 12233-7020

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION II

2017 OCT 26 PM 2:40  
U.S. Environmental Protection Agency  
Region II

IN THE MATTER OF:

Newcomb Oil Co., Inc.

Respondent

)  
) Docket No. RCRA-02-2017-7705  
)  
)  
) EXPEDITED SETTLEMENT  
) AGREEMENT AND  
) FINAL ORDER  
)  
)  
)

**EXPEDITED SETTLEMENT AGREEMENT**

1. The U.S. Environmental Protection Agency (“EPA”) has determined that Newcomb Oil Co., Inc. (“Newcomb Oil” or “Respondent”), owner and operator of the Underground Storage Tanks (“USTs”) at facilities located at Newcomb Oil Eastview, 8025 Victor-Pittsford Road, Victor, NY; (“Eastview Facility”); Newcomb Pittsford Village Mart, 57 North Main St., Pittsford, NY (“Pittsford Facility”); Newcomb Elmgrove, 2960 Buffalo Road, Rochester, NY (“Elmgrove Facility”); and Newcomb Wayneport, 337 Route 31, Macedon, NY (“Wayneport Facility”), collectively known as the “Facilities,” failed to comply with the following requirement(s) of Subtitle I of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6991 *et seq.*, and its implementing regulations at 40 C.F.R. Part 280:
  - 40 C.F.R. § 280.93(a) requires that all UST system owners and operators must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. During the September 3, 2015 UST inspection of the Eastview Facility, an EPA contractor inspector noted that Respondent did not demonstrate a financial responsibility mechanism that would provide third party bodily injury liability for any of its USTs. On November 10, 2015, Mr. Paul Sacker of EPA, received an e-mail from Mr. Rick Brown, Operations Manager, Newcomb Oil, which provided documentation that this facility, as well as the other three listed, above became insured as of October 8, 2015. Respondent indicated in its March 25, 2016 IRL response that it thought it had met the financial responsibilities requirement for 40 C.F.R. § 280.93 by being “self-insured.” However, it performed a “net worth test” and determined that it was not eligible to use self-insurance to provide financial responsibility for its USTs. Therefore, the IRL response states that “Newcomb Oil determined the most expedient way to satisfy this requirement was to purchase insurance.” Respondent’s failure to maintain adequate financial responsibility for the sixteen USTs at its four Facilities prior to October 8, 2015 is a violation of 40 C.F.R. § 280.93.
2. The EPA and the Respondent agree that settlement of this matter for a penalty of \$3,400 without further proceedings is in the public interest.
3. The EPA is authorized to enter into this Expedited Settlement Agreement and Final Order (“Agreement”) pursuant to section 9006 of RCRA and 40 C.F.R. § 22.13(b) and § 22.18(b)(2).
4. In signing this Agreement, the Respondent: (1) admits that the Respondent is subject to requirements listed above in Paragraph 1, (2) admits that the EPA has jurisdiction over the Respondent and the

Respondent's conduct as described herein, (3) neither admits nor denies the factual determinations contained herein, (4) consents to the assessment of the penalty in paragraph (2) above, and (5) waives any right to contest the determinations contained herein.

5. By its signature below, the Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that it has: (1) corrected the violations described above, (2) submitted true and accurate documentation of those corrections, (3) provided a deposit for full payment of the civil penalty in Paragraph 2 above in accordance with the EPA penalty collection procedures provided to the Respondent, (4) submitted true and accurate proof of deposit for full payment of the civil penalty with this Agreement, and (5) agreed to release the deposit for full payment to the EPA upon entry of this Order.
6. Full payment of the penalty in Paragraph 2 shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts described in Paragraph 1 above. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
7. Upon signing and returning this Agreement to the EPA, the Respondent waives the opportunity for a hearing or appeal pursuant to Section 9006(b) of RCRA or 40 C.F.R. Part 22.
8. Each party shall bear its own costs and fees, if any.
9. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon the date of its filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.

IT IS SO AGREED,

RESPONDENT:

Name of individual signing (print): Michael A Newcomb

Title: President  
Newcomb Off Co., Inc.

Signature: 

Date: 9/27/17

APPROVED BY EPA:

  
Kate LaPosta, Director  
Division of Enforcement and Compliance Assistance

Date 10/23/17

Newcomb Oil Co., Inc.  
Docket No. RCRA-02-2017-7705

**FINAL ORDER**

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Expedited Settlement Agreement ("Agreement"). This Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 9006 of the Act and 40 C.F.R. § 22.18(b)(3). The Effective Date of this Order shall be the date of its filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York. 40 C.F.R. § 22.31(b).

BY: Helen Ferrara  
Helen Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: October 24, 2017

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Expedited Settlement Agreement and Final Order bearing docket number RCRA-02-2017-7705, in the following manner to the respective addressees listed below:

Original and Copy  
By Hand Delivery:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Certified Mail/#:  
Return Receipt Requested:

7016 3560 0000 4255 3104

Michael A. Newcomb, President  
Newcomb Oil Co., Inc.  
4 Schoen Place  
Pittsford, NY 14534

Dated: 10/26, 2017

Aline Razafimanjandra