



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

NOV 01 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7016 3560 0000 4255 4996

Tom Danielson, President
Danielson Oil Co., Inc.
258 Crescent St.
Jamestown, NY 14701

Re: Underground Storage Tank (UST) Compliance Inspection of:

Table with 2 columns and 3 rows listing inspection details for Danielson Oil Co., Inc., Falconer Mobil, and Lakewood Mobil.

Final Expedited Settlement Agreement
Docket No. RCRA-02-2017-7706

Dear Mr. Danielson:

The U.S. Environmental Protection Agency (EPA) Region 2 is in receipt of Danielson Oil Co., Inc.'s penalty payment of \$9,750, the signed Expedited Settlement Agreement, and the documentation that the USTs at the above referenced facilities are now in compliance.

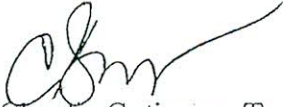
Enclosed you will find a copy of the Expedited Settlement Agreement and Final Order issued by EPA. EPA has approved the Expedited Settlement Agreement based on your signed certification and supporting compliance documentation.

Vertical stamps: U.S. Environmental Protection Agency, 2018 NOV -1 PM 3:30

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 \$23,426 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. 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

Enclosures

Expedited Settlement Agreement
Standard Information for Small Businesses

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION II**

IN THE MATTER OF:

Danielson Oil Co. Inc.

Respondent

Docket No. RCRA-02-2017-7706

**EXPEDITED SETTLEMENT
AGREEMENT AND
FINAL ORDER**

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency (“EPA”) has determined that Danielson Oil Co., Inc. (the “Respondent”), owner and/or operator of the Underground Storage Tanks (“USTs”) at the following facilities:

Respondent Oil Co., Inc. 258 Crescent St. Jamestown, NY 14701 PBS #9-222895	Dom’s Mobil 731 Foote Ave. Jamestown, NY 14701 PBS #9-222909
Falconer Mobil 34 East Main St. Falconer, NY 14733 PBS #9-222917	Frewsburg Mobil 21 East Main St. Frewsburg, NY 14738 PBS #9-222925
Lakewood Mobil 409 East Fairmount Ave. Lakewood, NY 14750 PBS #9-600228	

An EPA enforcement officer noted that 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:

- a.) During EPA’s October 25, 2016 UST inspection at Respondent’s facility located at 258 Crescent St., Jamestown, NY 14701, the inspector was unable to verify that an operational overfill prevention device was installed on USTs 10, 11, and 12. EPA’s December 22, 2016 and February 6, 2017 IRLs requested Respondent to provide documentation that the UST at this facility had a functioning overfill prevention device prior to the inspection. Respondent’s December 30, 2016 and February 28, 2017 IRL responses failed to provide information demonstrating that at least two USTs had preexisting overfill prevention devices prior to the inspection. Respondent also did provide documentation that the aforementioned USTs had new overfill prevention devices installed as of November 1, 2016. By not providing evidence of having installed adequate overfill prevention devices on at least two of its USTs, Respondent is in violation of 40 C.F.R. §280.20(c) from at least October 25, 2016 (day of inspection) until November 1, 2016 when the overfill prevention devices were installed.

- b.) During EPA's April 14, 2016 UST inspection at Respondent's facility located at 731 Foote Ave Jamestown, NY 14701, the inspector was unable to verify the operation of an overfill prevention device on UST # 6 (4,000-gallon premium fuel UST). EPA's July 19, 2016 and February 6, 2017 IRLs requested that Respondent provide documentation that UST #6 had a functioning prevention device prior to the inspection. Respondent's August 16, 2016 and February 28, 2017 IRL responses did not provide documentation that UST # 6 had a pre-existing overfill prevention device prior to the April 14, 2016 inspection but did provide documentation that a new overfill prevention device had been installed in May 2016. By not providing evidence of having installed adequate overfill prevention devices on UST # 6 prior to the inspection, Respondent is in violation of 40 C.F.R. §280.20(c) for one UST from at least April 14, 2016 (day of inspection) until at least May 1, 2016 (earliest date in May).
- c.) During EPA's April 14, 2016 UST inspection at Respondent's facility located at 34 East Main Street, Falconer, NY, the inspector was unable to verify the operation of an overfill prevention device on UST #11 (kerosene UST). EPA's July 19, 2016 and February 6, 2017 IRLs requested Respondent provide documentation that this facility had a functioning prevention device installed on the kerosene UST prior to the inspection, or documentation that an overfill prevention device was installed afterwards. Respondent's August 16, 2016 and February 28, 2017 IRL responses did not provide documentation that the kerosene UST had a pre-existing overfill prevention device prior to the April 14, 2016 inspection but did provided documentation that a new overfill prevention device was installed in November 2016. By not installing an adequate overfill prevention device on UST # 11 prior to the April 14, 2016 inspection, Respondent is in violation of 40 C.F.R. §280.20(c) for one UST from at least April 14, 2016 (day of inspection) until at least November 1, 2016 (earliest date in November).
- d.) During EPA's April 14, 2016 UST inspection at Respondent's facility located at 409 East Fairmount Ave., Lakewood, NY, the inspector was unable to verify the operation of an overfill prevention device on USTs 3 and 4 (gasoline tanks). EPA's July 19, 2016 and February 6, 2017 IRLs requested Respondent to provide documentation that the USTs at this facility had a functioning overfill prevention device prior to the inspection, or that devices were installed subsequent to the inspection. Respondent's August 16, 2016 and February 28, 2017 IRL responses did not provide documentation that UST 3 and 4 had a pre-existing overfill prevention device prior to the inspection but did provided documentation that new overfill prevention devices were installed in the "1st week in May." By not installing an adequate overfill prevention device on USTs # 3 and 4 prior to the April 14, 2016 inspection, Respondent is in violation of 40 C.F.R. §280.20(c) for two USTs from at least April 14, 2016 (day of inspection) until at least May 9, 2016.
- e.) During EPA's April 14, 2016 inspection of Respondent's USTs located at 731 Foote Ave Jamestown, NY 14701, the inspector was informed that USTs # 6, 7, 8, and 9 were of the sti-P3 variety and thus rely on sacrificial anodes for corrosion protection. However, the inspector was provided only one set of cathodic corrosion protection test results, dated April 30, 2015 (USTs # 6, 7 and 8) and May 8, 2015 (UST #9) and not a second test conducted in the three years prior to the 2015 results as required by 40 C.F.R. §280.31(b). EPA's July 19, 2016 IRL requested that Respondent provide the last two cathodic corrosion protection test results conducted on the four stip-P3 USTs prior to April 14, 2016 inspection. Respondent's August 16, 2016 IRL

response provides corrosion testing results for the tanks dated June 23, 2010 (USTs # 6, 7, 8) and September 1, 2010 (UST # 9) results and repeats the 2015 results. As the 2010 and 2015 test results are more than three years apart, EPA's February 6, 2017 IRL asked Respondent to confirm that it has no other cathodic corrosion protection tests for the four tanks within the three years prior to the 2015 results. Respondent's February 28, 2017 IRL response states "As we have complied with New York State inspections I am sure we had corrosion testing done but I have missed placed or thrown out old records." By not providing at least one set of cathodic protection corrosion test results on the four USTs in the three years prior to the 2015 test results, Respondent is in violation of 40 C.F.R. §280.31(d) from at least June 23, 2013 (next due date after the 2010 results) through April 30, 2015 (for three USTs) and September 1, 2013 (next due date after the 2010 results through May 8, 2015 (one UST).

f.) During EPA's April 14, 2016 and October 25, 2016 inspections of the USTs located at the facilities listed above, the inspector was not provided evidence that each facility had coverage for third party bodily injury liability as required by 40 C.F.R. §280.93 and this was noted in EPA's July 19, 2016 and December 22, 2016 IRLs. In Respondent's August 16, 2016 and December 30, 2016 IRL responses, it provided information arguing that the New York State Oil Spill Fund provide compliances for USTs in NY State with the financial responsibility requirements. EPA responded in its February 6, 2017 IRL by providing Respondent documentation that in New York, owners and operators must still obtain third-party bodily injury coverage to satisfy the entire federal financial responsibility requirements and that the Fund is not liable for claims for third party bodily injury. Respondent's February 28, 2017 IRL response provides a general liability insurance policy for its five sites effective November 13, 2016. EPA's has reviewed that policy and concludes that it does not adequately provide financial responsibility assurance, including 3rd party bodily injury liability coverage. Thus, by not having adequate coverage for third party bodily injury liability, Respondent is in violation of 40 C.F.R. § 280.93 from at least April 14, 2011 (five years from earliest inspection) until the present.

2. The EPA and the Respondent agree that settlement of this matter for a penalty of \$9,750 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 alleged herein, (3) neither admits nor denies the factual determinations contained herein, (4) consents to the assessment of this penalty, 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 alleged violations, (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) agrees 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 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): Tom Danielson

Title: Pres Danielson Oil

Signature: 
Danielson Oil Co., Inc.



**SIGN
HERE**

Date: 12 5 17

APPROVED BY EPA:


for Dore E. LaPosta, Director
Division of Enforcement and Compliance Assistance

Date 10/25/18

Danielson Oil Co., Inc.
Docket No. RCRA-02-2017-7706

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

DATE: October 30, 2018

Danielson Oil Co., Inc.
Docket No, RCRA-02-2017-7706

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-02-2017-7706, 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, 16th Floor
New York, NY 10007-1866

Copy by Certified Mail/#
Return Receipt Requested:

7016 3560 0000 4255 4996
Tom Danielson, President
Danielson Oil Co., Inc.
258 Crescent St.
Jamestown, NY 14701

Dated: 11/01/2018, 2018 Carolyn Drayton