



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

OCT 30 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Numbers :7016 3560 0000 4255 4835 - 7016 3560 0000 4255 2787

Harold Geiger, Owner
473 E Delavan, Inc.
P.O. Box 473
Grand Island, NY 14072

Harold Geiger, Owner
1545 Broadway, Inc.
2320 W. Oakfield Rd
Grand Island, NY 14072

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

Table with 2 columns and 2 rows containing facility names and addresses: Texas Gas Convenient Market, The Sheridan Market, Inc., Walden Convenient Mart.

Final Expedited Settlement
Docket No. RCRA-02-2018-7710

Dear Mr. Geiger:

The U.S. Environmental Protection Agency (EPA) Region 2 is in receipt of 473 E Delavan, Inc. and 1545 Broadway, Inc's penalty payment of \$2,550, 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.

Broadway, 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 473 E Delavan, Inc. and 1545 Broadway, 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 \$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**

2018 NOV - 1 PM 3:30
OFFICE OF THE REGIONAL ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
1000 WATERGATE DRIVE
WASHINGTON, DC 20037

IN THE MATTER OF:)
)
473 E. Delavan, Inc., and) **Docket No. RCRA-02-2018-7710**
1545 Broadway, Inc.)
)
Respondents) **EXPEDITED SETTLEMENT**
) **AGREEMENT AND**
) **FINAL ORDER**
)
)
_____)

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency (“EPA”) has determined that 473 E. Delavan, Inc., and 1545 Broadway, Inc. (henceforth the “Respondents”); owner of the Underground Storage Tanks (“USTs”) at the facility located at:

Texas Gas Convenient Market 473 E Delavan Ave Buffalo, NY 14215 NYSDEC PBS#: 9-221090	The Sheridan Market, Inc. 1066 Sheridan Drive Tonawanda, NY 14150 NYSDEC PBS#: 9-448427
Walden Convenient Mart 599 Walden Ave. Buffalo, NY 14211 NYSEDEC PBS#: 9-459690	

(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. Part 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 May 17, 2016 UST inspections of the Facilities, the EPA contractor inspector noted that Respondents did not demonstrate a financial responsibility mechanism that would provide third party bodily injury liability for the nine USTs at these Facilities. EPA’s September 15, 2017 and December 5, 2017 IRLs requested Respondents to provide documentation of a financial responsibility mechanism for the USTs that provides third party bodily injury liability coverage from at least twelve months prior to the inspection (May 17, 2015) through the date of receipt of the IRL. Respondents’ October 15, 2017 and December 22, 2017 IRL responses indicated that they did not have third party bodily injury coverage prior to the inspection for any of the USTs. They presented documentation that they had obtained policies providing third party bodily injury liability coverage for the facility at 1066 Sheridan Drive for the period of June 16, 2016 through June 16, 2018 and a similar policy

for the facility at 599 Walden Ave effective October 7, 2016 through October 7, 2018, 2018. For the facility owned by 473 E. Delavan, Inc., Respondents in February 2018 indicated that they were unable to secure the required insurance due to the age of the existing tanks and had informed EPA of plans to remove them in the Spring of 2018. Respondents' failures to maintain adequate financial assurance for the nine USTs at the Facilities from at least May 17, 2015 through June 16, 2016 for the USTs located at 1066 Sheridan Drive.; through October 7, 2016 for the USTs located at 599 Walden Ave. and through at least the Spring of 2018 for the USTs located at 473 E. Delavan, Inc., are violations of 40 C.F.R. § 280.93.

2. The EPA and the Respondents agree that settlement of this matter for a penalty of \$2,550 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 Respondents: (1) admit that each Respondent is subject to requirements listed above in Paragraph 1, (2) admit that the EPA has jurisdiction over the Respondents and the Respondents' conduct as described herein, (3) neither admit nor deny the factual determinations contained herein, (4) consent to the assessment of the penalty in paragraph (2) above, and (5) waive any right to contest the determinations contained herein.
5. By its signature below, the Respondents certify, subject to civil and criminal penalties for making a false submission to the United States Government, that they have: (1) corrected the violations described above, (2) submitted true and accurate documentation of those corrections, including, but not limited to, documentation showing that an extension of the required insurance was obtained for 1066 Sheridan Drive effective on or about June 16, 2018, (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 Respondents, (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 Respondents' 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 Respondents waive 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.

473 E. Delavan, Inc. & 1545 Broadway, Inc.
Docket No. RCRA-02-2018-7710

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 25, 2018

473 E. Delavan, Inc. & 1545 Broadway, Inc.
Docket No, RCRA-02-2018-7710

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-02-2018-7710, 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

And On October 30, 2018,

Copy by Certified Mail/#s: 7016 3560 0000 4255 4835 – 7016 3560 0000 4255 2787

Return Receipt Requested:

Harold Geiger, Owner
473 E. Delavan, Inc.
P.O. Box 473
Grand Island, NY 14072

Harold Geiger, Owner
1545 Broadway, Inc.
2320 W. Oakfield Road
Grand Island, NY 14072

Dated: 11 / 01, 2018 Alewe Razafimanjandra