

On December 13, 2019, EPA's Paul Sacker sent an e-mail to Respondent requesting details on how it maintained monthly records of the suction lines. The responses from Respondent's consultants over the period of December 13 through 19, 2019 indicated that the Respondent had not been maintaining records of the release detection system for the suction lines, but that Respondent would seek a method to do so and let EPA know when it was secured. On March 12, 2020, Respondent provided results of line tightness tests conducted on the two non-exempt suction lines as an alternative to monthly monitoring via containment sumps of the lines and subsequent record keeping as a way to come into compliance

Respondent's failure to maintain records of monthly release detection monitoring of the non-exempt underground suction lines from at least June 26, 2018 through March 12, 2020 at its Facility constitutes a violation of 40 C.F.R. §280.34(b)(7).

- b.) 40 C.F.R. §280.35(a)(1) requires that spill prevention equipment that is single walled, be hydrostatically tested triennially to ensure its integrity. In addition, it requires that single walled containment sumps that are part of a release detection system for underground piping also be hydrostatically tested triennially to ensure integrity. Furthermore, 40 C.F.R. §280.35(b)(1) requires that the first of these tests must have occurred by October 13, 2018. During the June 26, 2019 UST inspection of the Facility, the inspector was not provided hydrostatic test results for the two USTs' spill prevention devices and containment sumps (the sumps were part of the release detection system for the non-exempt suction piping on site and thus required testing). Subsequently, on July 8, 2019, Respondent provided to EPA's contract inspector Jeff Blair, the results of hydrostatic testing of only the containment sumps dated July 2, 2019.

EPA's October 4, 2019 NOV-IRL requested Respondent provide results of any hydrostatic tests performed on the two spill prevention devices for the period starting October 13, 2015 (when the two-spill prevention device testing regulation first went into effect) through the date of receipt of the letter (October 9, 2019). In addition, the letter requested clarification on the type of underground lines used for the USTs and the method of release detection used on those lines. Further, it asked for results of hydrostatic testing on any lines that required it pursuant to 40 C.F.R. §280.35(a).

Respondent's December 6, 2019, NOV-IRL response provided that the underground portion of the UST supply lines used non-exempt suction and was monitored for releases using a containment sump and electronic interstitial monitoring. The hydrostatic test of the containment sumps dated July 2, 2019 was re-submitted. No earlier hydrostatic test results of the containment sumps or any results of a hydrostatic test on the two spill prevention devices were provided. On December 13, 2019, Paul Sacker sent an e-mail to Respondent requesting more details about spill prevention device testing. On December 16, 2019, Respondent provided results of hydrostatic tests on the spill prevention devices dated December 13, 2019.

Respondent's failure to test the two USTs' spill prevention devices and containment sumps at its facility by the deadline of October 13, 2018 constitutes two violations of both 40 C.F.R. §280.35(a)(1) and 35(b)(1).

- c.) 40 C.F.R. §280.35(a)(2) requires that overfill prevention equipment must be inspected

triennially to ensure that overflow prevention equipment is set to activate at the correct level specified in §280.20(c) and will activate when regulated substance reaches that level. Furthermore, 40 C.F.R. §280.35(b)(1) requires that the first of these inspections must have occurred by October 13, 2018. During the June 26, 2019 UST inspection of the Facility, the inspector was not provided results of an inspection of the overflow prevention devices on the two USTs. Subsequent to the June 26, 2019 inspection, on July 8, 2019, Respondent provided to EPA's contract inspector Jeff Blair, the results of an inspection of the two overflow devices dated July 2, 2019.

EPA's October 4, 2019 NOV-IRL requested Respondent provide all results of other inspections of the overflow prevention device for the two USTs conducted for the period starting October 13, 2015 (when the overflow prevention device inspection regulation first went into effect) through July 2, 2019. Respondent's December 6, 2019, reply to the NOV-IRL only provided results of the July 2, 2019 inspection of the overflow prevention devices. No earlier inspection results were provided.

Respondent's failure to inspect the two USTs' overflow prevention devices at its Facility by the deadline of October 13, 2018 constitutes violations of both 40 C.F.R. §280.35(a)(2) and 35(b)(1).

- d.) 40 C.F.R. §280.40(a)(3) requires that owners and operators of USTs annually test their release detection equipment and ensure its electronic and mechanical components are operated properly. Furthermore, the first of these tests must have occurred by October 13, 2018. During the June 26, 2019 UST inspection of the Facility, the inspector was not provided results of an inspection of the release detection equipment for both the tanks and underground lines. Subsequent to the inspection, on July 8, 2019, Respondent provided to EPA's contract inspector Jeff Blair, the results of an inspection of the release detection equipment dated July 2, 2019.

EPA's October 4, 2019 NOV-IRL requested Respondent provide all results of inspections of the release detection equipment for the two USTs conducted for the period starting October 13, 2015 (when the release detection equipment testing regulation first went into effect) through July 2, 2019. Respondent's December 6, 2019, reply to the NOV-IRL only re-submitted results of the July 2, 2019 inspection of the release detection equipment. No earlier inspection results were provided.

Respondent's failure to inspect the two USTs' release detection equipment at its Facility by the deadline of October 13, 2018 constitutes a violation of 40 C.F.R. §280.40(a)(3).

- e.) 40 C.F.R. §§280.240 and 241 require that by October 13, 2019, owners and operators of USTs designate and train Class A, B and C operators who meet the requirements of 40 C.F.R. Part 280, Subsection J. During the June 26, 2019 UST inspection of the Facility, the inspector was not provided identification of any Class A, B or C operator for the two USTs. Subsequent to the inspection, on July 29, 2019, Respondent provided to EPA documentation that it had secured a vendor to provide Class A and B services and had trained a member of Facility staff to be a Class C operator. EPA's October 4, 2019 NOV-IRL requested Respondent provide documentation for all

certified Class A, B and C operators for the Facility as of the implementation deadline of October 13, 2018 through the date of receipt of this letter. Respondent's December 6, 2019, reply to the NOV-IRL provided documentation that Class A, B and C operators had been trained and designated as of July 18, 2019. No earlier designations were provided.

Respondent's failure to designate Class A, B and C operators for two USTs at its Facility by the deadline of October 13, 2018 constitutes a violation of 40 C.F.R. §§280.240 and 241.

2. The EPA and the Respondent agrees that settlement of this matter for a penalty of **\$9,060**, 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 signature below, the Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent has: (1) corrected the alleged violations, (2) submitted true and accurate documentation of those corrections, (3) provided a deposit for 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 payment of the civil penalty with this Agreement, and (5) agreed to release the deposit for payment to the EPA upon entry of this Order. 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.
6. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal or state income tax purposes.
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. EPA and Respondent agree that the parties may use electronic signatures for this matter.
9. Each party shall bear its own costs and fees, if any.
10. 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.

Telx-Clifton, LLC
Docket No. RCRA-02-2020-7707

IT IS SO AGREED,

RESPONDENT:

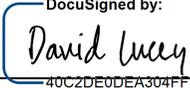
Name of individual signing (print): David Lucey

Title: SVP, Portfolio Management Group

On behalf of
Telx - Clifton, LLC,
a Delaware limited liability company

By: Digital Realty Trust, L.P.,
its manager

By: Digital Realty Trust, Inc.,
its general partner

Signature:  _____
40C2DE0DEA304FF...

Date: December 28, 2020

COMPLAINANT:

For Dore LaPosta, Director
Enforcement and Compliance Assurance Division

Date _____

Telx-Clifton, LLC
Docket No. RCRA-02-2020-7707

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: _____