

P. Sacker



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 15 2017

2017 SEP 19 23:11:40
U.S. Environmental Protection Agency

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7016 3560 0000 4260 4103

Myron P. Shevell, Chairman
New England Motor Freight, Inc.
1-71 North Avenue East
Elizabeth, NJ 07201

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

New England Motor Freight
7201 Schuyler Road
East Syracuse, NY 13057
NYS DEC PBS #7-004928

Expedited Settlement
Docket No. RCRA-02-2017-7707

Dear Mr. Shevell:

The U.S. Environmental Protection Agency (EPA) Region 2 is in receipt of New England Motor Freight, Inc.'s penalty payment of \$2,130, 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 New England Motor Freight, 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 New England Motor Freight, 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. 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 SEP 12 11:11:10
EPA REGION II

IN THE MATTER OF:)
)
New England Motor Freight, Inc.)
)
Respondent)
)
_____)

Docket No. RCRA-02-2017-7707

**EXPEDITED SETTLEMENT
AGREEMENT AND
FINAL ORDER**

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency (“EPA”) has determined that New England Motor Freight, Inc. (“Respondent”), owner and operator of the Underground Storage Tank (“UST”) located at New England Motor Freight, 7201 Schuyler Road, East Syracuse, NY 13057 (the “Facility”) 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. 40 C.F.R. Part 280.45(c) requires that owner/operators of UST systems maintain written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site for at least one year after the servicing work is completed, or for another reasonable time period determined by the implementing agency. During EPA’s April 6, 2016 UST inspection of the Facility it was noted that the 10,000-gallon diesel UST was monitored for releases via a combination of electronic interstitial monitoring (EIM) and an automatic tank gauge that conducted continual statistical leak detection (CSLD). The inspector obtained a printout from the EIM monitor, a Veeder Root TLS-350 that indicated a high liquid alarm from May 18, 2015 through October 18, 2015 in the interstitial space. No records from the CSLD system were provided. The increased levels of liquid in the interstitial space could be an indication of a release from the tank. A review of the New York State Department of Environmental Conservation (NYSDEC)’s spill incident database revealed that no spill from an underground system was reported for this facility between May, 18, 2015 and October 19, 2015 (24 hours after last recorded alarm).

EPA’s July 20, 2016 and December 22, 2016 IRLs requested detailed information from Respondent on how it addressed the alarms for the period in question. Respondent’s August 15, 2016 IRL response and follow-up phone conversations and e-mails between Mac Walker, Real Estate Manager for Respondent and EPA Enforcement Officer, Paul Sacker, revealed that while Respondent was aware since at least April 2015 of a problem with the tank’s EIM sensor and the brine solution it was housed in that caused the sensor to create false alarms in warmer months; it determined that there was no need to report any release to the NYS DEC pursuant to 40 C.F.R. § 280.50 during the time the EIM system was in alarm, including the May 2015 alarm noted by the EPA. Furthermore, other than keeping 10-day inventory reconciliation records (a release detection method not approved by federal

regulations) and running the CSLD system in the background, it took no action to document the steps it was taking to address the alarms and ensure that no release was occurring nor did it maintain monthly records of the CSLD system. The interstitial sensor and brine solution for the tank were replaced in May 2016.

As Respondent has not provided records of an alternative form of adequate release detection for the period the UST was known to be in alarm or provided other maintenance records to show any specific documentation of the steps it took to address the recorded failure of the EIM system, it is a violation of 40 C.F.R. 280.45 from at least May 18, 2015 through October 18, 2015 (date EIM system was shown to again work properly).

2. The EPA and the Respondent agree that settlement of this matter for a penalty of \$2,130 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:

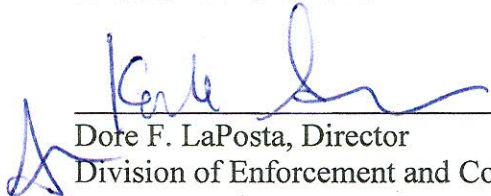
Name of individual signing (print): MAC WALKER

Title: DIRECTOR
New England Motor Freight, Inc.

Signature: 

Date: 8/15/17

APPROVED BY EPA:


Dore F. LaPosta, Director
Division of Enforcement and Compliance Assistance

Date SEP - 8 2017

New England Motor Freight, Inc.
Docket No. RCRA-02-2017-7707

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

DATE: September 12, 2017