

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION II

IN THE MATTER OF:
Lucky Petroleum, Inc.
Respondent
Docket No. RCRA-02-2020-7703
EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER

EXPEDITED SETTLEMENT AGREEMENT

- 1. The U.S. Environmental Protection Agency ("EPA") has determined that the above named (henceforth "Respondent"), is the owner and/or operators of Underground Storage Tanks ("USTs") as indicated at the following locations (the "Facilities"):

Table with 4 columns: PBS #, Facility, Address, City. Rows include Lucky Petroleum, Inc. and Catskill Food Mart locations.

Furthermore, EPA has determined that the Respondent has 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. § 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 such of these tests must have occurred by October 13, 2018. During the March 27, 2019 UST inspection of the facility located at 131 Ulster Ave., Saugerties, NY, the inspector was provided hydrostatic test results for the five USTs' spill prevention devices and containment sumps (the sumps were part of the release detection system for the pressurized piping on site and thus required testing) dated March 19, 2019 which is after the October 13, 2018 deadline.

EPA's May 15, 2019 NOV-IRL requested that Respondent provide results of any prior hydrostatic testing results for the spill prevention devices and containment sumps on the five USTs at this facility conducted between October 13, 2015 (when the regulation first came into effect) until March 19, 2019. Respondent's September 16, 2019 response to the May 15, 2019 NOV-IRL stated that the tests were delayed due to the weather and other factors. No prior tests were provided.

Respondent's failure to test the five USTs' spill prevention devices and containment sumps at its facility located at 131 Ulster Ave., Saugerties, NY by the deadline of October 13, 2018 constitutes two violations of 40 C.F.R. § 280.35(b)(1).

- b.) 40 C.F.R. § 280.41(a) requires owners and operators of UST systems to use one of the release detection methods listed in 40 C.F.R. § 280.43 to monthly monitor USTs for leaks. During the March 26, 2019 UST inspection of the facility located at 718 Columbia St., Hudson, NY the inspector noted that the manifolded USTs # 1 and #2 (the two 6,000-gallon regular gasoline storage tanks respectively) were jointly monitored for releases via continuous statistical leak detection ("CSLD") via a Veeder-Root TLS-350 automatic tank gauge. However, the release detection system showed invalid test results for the period of November 9, 2018 through February 17, 2019. Repair records provided the inspector indicate that this was determined to be a faulty check valve by a contractor on February 12, 2019 and was subsequently repaired.

EPA's May 15, 2019 NOV-IRL requested that Respondent state whether or not USTs #1 and #2 remained in operation during the period of the malfunction and contained product or if they were emptied as defined by 40 C.F.R. § 280.70(a). It also asked, if the USTs remained in operation, for Respondent to provide documentation of what alternative federally approved method of release detection (as defined by 40 C.F.R. § 280.43) was conducted on USTs #1 and #2 during the period of the malfunction and provide records of monthly monitoring. Respondent's September 16, 2019 response to the May 15, 2019 NOV-IRL stated that the USTs did remain in operation during the period and that the only alternative release detection it could provide was 10-day inventory control reconciliation sheets which EPA does not recognize as an acceptable method for USTs over 10-years of age (the facility's USTs were installed in 1986). Respondent also provided liquid status reports for the pressurized piping, but this is not adequate for monitoring the USTs themselves.

Respondent's failure to properly monitor the two 6,000-gallon regular gasoline USTs at its 718 Columbia St., Hudson, NY facility from at least November 9, 2018 through February 17, 2019 is a violation of 40 C.F.R. § 280.41(a).

- c.) 40 C.F.R. § 280.93 requires that all UST system owners or 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.

EPA's September 25, 2018 UST inspections of the facilities located at 109 South Main St., Ellenville, NY; 5790 Route 209, Kerhonkson, NY; and 3139 Route 28, Shokan, NY determined that the three facilities did not have a financial assurance mechanism available for its USTs that provided, at a minimum, third party bodily injury liability coverage (the minimum coverage required by EPA in New York State). EPA sent an NOV-IRL on November 15, 2018 requesting that Respondent provide documentation showing that the USTs at the Facilities had the necessary financial assurance coverage. Respondent's January 16, 2019 response to the November 15, 2018 provided an insurance policy that provided third-party bodily injury coverage for the USTs at the three facilities inspected on September 25, 2018 that began on November 27, 2018. No policy for an earlier period of coverage was provided.

During EPA's UST inspections over the period of March 26 through 28, 2019 of Respondent's remaining five facilities, the inspector was provided documentation showing that each facility had the same insurance policy providing third-party bodily injury coverage that began on November 27, 2018. No earlier policy was provided to the inspector.

EPA's May 15, 2019 NOV-IRL requested that Respondent confirm that it did not have a financial assurance mechanism for all eight of its facilities prior to November 27, 2018. Respondent's September 16, 2019 response to the May 15, 2019 NOV-IRL stated that it did not believe it required financial assurance for the Facilities prior to EPA's inspection and thus did not have it.

Respondent's failure to maintain required financial responsibility that includes third party bodily injury liability coverage for the USTs at its eight facilities prior to November 27, 2018 is a violation of 40 C.F.R. § 280.93.

2. The EPA and the Respondent agrees that settlement of this matter for a penalty of **\$12,640**, 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) consent 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 Respondents, (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.

Lucky Petroleum, Inc.  
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IT IS SO AGREED,

RESPONDENT:

Name of individual signing (print): Surinder S Cheema

Title: president  
Surinder S. Cheema, President  
Lucky Petroleum, Inc.

Signature: Seema

Date: 09-16-2020

COMPLAINANT:

For \_\_\_\_\_  
Dore LaPosta, Director  
Enforcement and Compliance Assurance Division

Date \_\_\_\_\_

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**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: \_\_\_\_\_