

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION II

IN THE MATTER OF:

FedEx Freight, Inc. &  
GPT Montgomery Owner, LLC

Respondents

Docket No. RCRA-02-2019-7703

EXPEDITED SETTLEMENT  
AGREEMENT AND  
FINAL ORDER

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency ("EPA") has determined that the above named companies (henceforth the "Respondents"), are the owner and/or operator of an Underground Storage Tank ("UST") at the following location: FedEx Freight East, Inc., 191 Nellytown Road, Montgomery, NY (NYS PBS # 3-601609) (the "Facility").

Furthermore, EPA has determined that the Respondents 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. § 280.20(c)(1)(i) requires that all UST system owners or operators must use spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin).

During a September 20, 2018 UST inspection, EPA inspectors were notified that the spill bucket for the one 2,000-gallon diesel fuel storage UST failed a hydrostatic test on June 1, 2018 and was awaiting a replacement. Inspectors asked the Facility contact, the Fleet Maintenance Manager, if deliveries continued after the spill bucket failure was noted, and he admitted that they continued in the amount of about two a week. On October 4, 2018, the Environmental Engineer for FedEx Freight, Inc. sent an e-mail to Mr. Sacker stating, "The spill bucket was hydrostatically tested on 6/1/2018 at which point it was determined to have failed the test." He also stated that a new spill bucket was ordered but its replacement was delayed until 10/1/2018. On October 5, 2018, Mr. Sacker received confirmation that 53 deliveries were received during the period the spill bucket was awaiting replacement.

Respondents' failure to maintain an adequate spill bucket during a period the Facility was receiving deliveries from at least June 1, 2018 through October 1, 2018 is a violation of 40 C.F.R. § 280.20(c)(1)(i).

b.) 40 C.F.R. § 280.50(a)-(c) requires that UST owners and operators report a suspected release within 24 hours to the implementing agency (in this case New York State Department of Environmental Conservation or "NYS DEC") for conditions that may indicate a release including unusual operating conditions resulting from defective system equipment or defective components that are not immediately repaired or replaced. The failure of the spill bucket detected on June 1, 2018 constitutes an unusual operating condition that could have resulted in a release. As noted above, Respondents admitted that they failed to replace the defective spill bucket during a period of four months where deliveries were continuing. In an October 10, 2018 email exchange between EPA Enforcement Officer Paul Sacker and the Environmental Engineer for FedEx Freight, Inc., Mr. Sacker asked if Respondents had notified the NYS DEC of the potential release of product to the environment resulting from the failed spill bucket and if they had investigated for any contamination. Mr. Sacker was informed that Respondents had not notified the NYS DEC as of that date. On October 17, 2018, Respondents provided evidence that they had reported a potential release to the NYS DEC that day.

Respondents' failure to report a suspected release due to an unusual operating condition of spill prevention equipment to the implementing Agency from at least June 1, 2018 through October 17, 2018 is a violation of 40 C.F.R. § 280.50(a)-(c).

2. The EPA and the Respondents agree that settlement of this matter for a penalty of **\$3,380**, 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 the Respondents are 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 and legal determinations contained herein, (4) for the purposes of settlement consent to the assessment of the penalty in paragraph (2) above, and (5) waive any right to contest the determinations contained herein.
5. By the 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 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 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.
6. No portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this Agreement shall be claimed by Respondents as a deduction for federal or state income tax purposes.

