



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

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U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II

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REGIONAL HEARING
CLERK

August 16, 2012

By Pouch Mail

Honorable M. Lisa Buschmann
Administrative Law Judge
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington, D.C. 20460-2001

Re: Valvo's Convenience & Gas, Inc. and Stephen M. Valvo, Individually
Docket Number: RCRA-02-2011-7507

Dear Judge Buschmann:

Counsel for Complainant and for Respondents have discussed and agree to the enclosed Joint Stipulations in the above-referenced case, as required by your "Order on Unopposed Motion to Re-Schedule Hearing," dated May 10, 2012. A copy of the Stipulations will be filed with the Regional Hearing Clerk.

Respectfully submitted,

A handwritten signature in cursive script that reads "Beverly Kolenberg".

Beverly Kolenberg
Assistant Regional Counsel

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of: Valvo's Convenience &
Gas, Inc. and Stephen M. Valvo,
Individually

Respondents.

Proceeding Under Section 9006 of the
Solid Waste Disposal Act, as amended.

Hon. M. Lisa Buschmann, Presiding Officer

Docket No. RCRA-02-2011-7507

JOINT STIPULATIONS

Pursuant to the May 10, 2012 "Order on Unopposed Motion to Re-Schedule Hearing" of this Court, the parties, by their respective counsel, hereby agree and stipulate to, and accept, the following:

I. Stipulated Facts

The following facts have been established and are to be deemed admitted for all purposes pertaining to or otherwise in connection with the administrative hearing to be held in and for the above-referenced proceeding:

1. The Respondents are Valvo's Convenience & Gas, Inc. and Stephen M. Valvo, Individually.
2. This administrative enforcement case relates to eight underground storage tanks ("USTs") at three facilities that are located in Silver Creek in western New York State. The facilities are Valvo's Convenience & Gas, Inc. and Valvo Transport¹ located at 1267 Routes 5 and 20 and the facility located at 351 Central Avenue in Silver Creek, New York, formerly known as the

¹ At present, Valvo Transport is an inactive company.

Hanover Convenience facility. Valvo's Convenience & Gas owns the properties located at 1267 Routes 5 and 20 and 351 Central Avenue.

3. Valvo's Convenience & Gas and Valvo Transport were inspected by EPA's authorized representative on February 26, 2007, and the former Hanover Convenience facility was inspected on August 10, 2007. The inspector re-inspected Valvo's Convenience & Gas on October 22, 2008 and Valvo Transport and the former Hanover Convenience facilities on March 15, 2010.
4. EPA also sent Respondent Valvo "information request letters" ("IRLs") under the authority of Section 9005(a) of the Solid Waste Disposal Act, as amended (the "Act"), 42 U.S.C. § 6991d(a), and its implementing regulation, 40 C.F.R. § 280.34, seeking information and records related to the USTs at his facilities. The first IRL was issued to Valvo's Convenience & Gas on December 21, 2007.
5. Respondent Valvo responded to EPA's December 21, 2007 IRL by submitting a number of documents to the Agency. The documents and a partial response were received by EPA on May 28, 2008. Among the documents submitted were copies of some of the six separate NYSDEC "Petroleum Bulk Storage" ("PBS") Certifications.
6. EPA sent a second IRL requesting information regarding the UST systems at the Valvo's Convenience & Gas, Valvo Transport, and the former Hanover Convenience facilities on or about May 10, 2010. EPA received a partial response on January 13, 2011 that stated that Valvo's Convenience & Gas had legal ownership of these properties; Respondent Valvo was the sole corporate officer, and Valvo's Convenience & Gas owned the USTs at the former Hanover Convenience facility.
7. On July 30, 2009, Valvo's Convenience & Gas filed a petition for relief under Chapter 11 of the Bankruptcy Code. The violations alleged in this administrative case, for which EPA is seeking a penalty, took place after the petition was filed.

8. As the owner and operator of underground storage tanks situated in New York State, Respondent Valvo was required to provide information to the New York State Department of Environmental Conservation ("NYSDEC") about his USTs in PBS Applications. Respondent Valvo filed PBS Applications for Valvo's Convenience & Gas, Inc. and Valvo Transport and for the facility located at 351 Central Avenue in Silver Creek, New York, formerly known as the Hanover Convenience facility.
9. Upon receiving the required information submitted in the Applications, NYSDEC issued PBS Certificates to Respondent Valvo attesting that the listed underground storage tanks had been registered with NYSDEC.
10. The PBS Certificates included various items of information, such as the number of tanks at the facility, the names of the owner(s) and operator(s) of the underground storage tanks at the facility, the address of the facility and contact information for the facility.
11. As part of Respondent Valvo's responses to EPA's IRLs, he provided copies of PBS Certificates, one for each of the three facilities referenced above.
12. The PBS Certificate for the 10,000-gallon UST and the 12,000-gallon UST for gasoline storage, and the 2,000-gallon UST for diesel fuel storage (all installed in March 1997) at Valvo's Convenience & Gas stated they were located on a portion of the real property at 1267 Routes 5 and 20 in Silver Creek, New York. They were registered with NYSDEC with the following PBS report number: PBS# 9-600317, listed as owned by Valvo's Convenience & Gas and operated by Respondent Valvo.
13. The PBS Certificate for the 10,000-gallon UST for diesel fuel storage (installed in May 1993) and the 2,000-gallon UST for waste oil storage (installed in November 1997) at Valvo Transport stated they were also located on a portion of the real property at 1267 Routes 5 and 20 in Silver Creek, New York. They were registered with NYSDEC with the following

number: PBS # 9-600126 and listed as owned by Valvo Transport, Inc. and operated by Respondent Valvo.

14. The PBS Certificate for the 8,000-gallon UST and 12,000-gallon USTs for gasoline storage, and 1,000-gallon UST for diesel fuel storage (all installed on June 1, 1991) stated they were located at 351 Central Avenue, Silver Creek, New York, formerly known as the Hanover Convenience facility. They were registered with NYSDEC with the following number: PBS # 9-425508. PBS Applications were filed for three USTs at 351 Central Avenue on March 8, 2002, May 23, 2004 and August 15, 2006. The PBS applications for 2004 and 2006 listed Respondent Valvo as the owner of the USTs and Melissa Elwell as the operator of the USTs.
15. On January 5, 2011, Respondent Valvo filed a PBS Application for the facility at 351 Central Avenue and identified himself as the owner of the USTs.
16. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, on February 26, 2007, Jeffrey K. Blair, Environmental Field Inspector, (“Inspector”), who worked for a contractor employed by EPA, inspected the UST systems located at the Valvo’s Convenience & Gas facility to determine their compliance with the Act and 40 C.F.R. Part 280. Mr. Blair prepared an Inspection Report indicating what he had observed and learned at the inspection.
17. At the time of the February 26, 2007 inspection, the three UST systems at the Valvo’s Convenience & Gas facility were not in use, and reportedly had not been in use since 2000. The USTs contained petroleum residue.
18. The inspection report stated that the USTs did not meet the requirements applicable to temporarily closed tanks for release detection, corrosion protection, and permanent closure.
19. On October 22, 2008, the Inspector re-inspected the UST systems located at the Valvo’s Convenience & Gas facility to determine their compliance with the Act and 40 C.F.R. Part 280.

20. On July 21, 2011, Paul Sacker, Environmental Engineer and EPA Inspector, (“EPA Inspector”) inspected the UST systems located at the new Valvo Convenience & Gas at 351 Central Avenue and at Valvo Transport to determine their compliance with the Act and 40 C.F.R. Part 280. Mr. Sacker prepared Inspection Reports to document his observations at the inspections.
21. Respondent Valvo told the EPA Inspector on July 21, 2011 that the tanks at the Valvo’s Convenience & Gas facility were not in use and were not empty. Release detection was not being performed.
22. On October 20, 2011, the Inspector re-inspected the UST systems located at Valvo’s Convenience & Gas to determine their compliance with the Act and 40 C.F.R. Part 280. Respondent Valvo informed the Inspector that the tanks were not in use. The Inspector determined that the two gasoline USTs had been emptied to no more than one inch of residue.
23. On or about May 23, 2012, Respondent Valvo’s Convenience & Gas and Respondent Valvo removed the two gasoline USTs from the property at 1267 Routes 5 and 20 in Silver Creek, New York.
24. The diesel UST has remained in the ground at the Valvo’s Convenience & Gas facility up to the present. Corrosion tests conducted on the diesel tank on June 29, 2011 and April 11, 2012 indicated that the tank’s sacrificial anode system used to protect the tank from corrosion was defective.
25. At the March 15, 2010 inspection, the diesel fuel UST at Valvo Transport had been in temporary closure since at least 2000 and contained 16.50 inches of petroleum product.
26. The waste oil UST at Valvo Transport was in temporary closure since at least some time between March 15, 2009 and September 15, 2009, and it contained 20.50 inches of petroleum residue.

27. At the inspection on March 15, 2010, Respondent Valvo told the Inspector that the waste oil UST was placed into temporary closure within the "last six months to a year." No evidence of release detection monitoring was provided to the Inspector for the waste oil UST.
28. On or about July 5, 2011, Respondent Valvo's Convenience & Gas and Respondent Valvo had the waste oil tank emptied to no more than one inch of residue.
29. On or about July 28, 2011, Respondent Valvo's Convenience & Gas and Respondent Valvo arranged to empty the diesel tank to no more than one inch of residue.
30. On or about February 21, 2012, Respondent Valvo's Convenience & Gas and Respondent Valvo removed the waste oil tank.
31. The former Hanover Convenience facility at 351 Central Avenue had three federally regulated USTs, all installed in June 1991. They were double-walled steel and equipped with sacrificial anodes for cathodic corrosion protection.
32. During the March 15, 2010 re-inspection of the facility at 351 Central Avenue, no cathodic protection test results were provided to the Inspector.
33. At the March 15, 2010 re-inspection, the two gasoline USTs at 351 Central Avenue were monitored via manual interstitial monitoring, and twelve months of passing records were available at the facility. No evidence that the diesel UST was being monitored was provided to the Inspector.
34. During the March 15, 2010 inspection, the two gasoline USTs at 351 Central Avenue were observed using pressurized piping, but no evidence of release detection monitoring or annual line tightness tests for the pressurized lines was provided to the Inspector.
35. On April 11, 2010, Respondent Valvo sent EPA information stating that cathodic protection tests had been conducted on March 8, 2007 and March 30, 2010 for the three USTs at the facility at 351 Central Avenue. The 12,000-gallon and 8,000-gallon USTs failed the tests.

Melissa Elwell, the operator, stated that the failing tanks were emptied and placed into temporary closure.

36. In a letter, dated April 11, 2010, Melissa Elwell, the operator of 351 Central Avenue, provided the Inspector with the results of a line tightness test for the two gasoline USTs, which were dated March 30 2010.
37. On March 22, 2011, Respondent Valvo sent EPA handwritten release detection records for the diesel UST at 351 Central Avenue showing that manual interstitial monitoring was being conducted for the months of January through March 2011.
38. During the July 21, 2011 EPA re-inspection of the diesel UST at 351 Central Avenue, Respondent Valvo gave the EPA Inspector additional written monthly records from January 2011 through July 2011 recording that the diesel UST had a score of zero showing no product was found during the interstitial monitoring each month.
39. On or about March 21, 2012, an inspector for NYSDEC visited the facility at 351 Central Avenue and confirmed that an interstitial monitoring port for the diesel UST could not be located by Respondent Valvo. The NYSDEC inspector also found that no release detection was being performed for the diesel UST.
40. On or about March 21, 2012, an inspector for the NYSDEC visited the facility at 351 Central Avenue and found that the results of the most recent cathodic protection testing of the diesel UST demonstrated it was not functioning adequately to protect the tank from corrosion.
41. On or about April 23, 2012, Respondent Valvo sent the Inspector for NYSDEC, photographs and receipts for work performed by Jemko Petroleum Equipment, Inc. at the facility at 351 Central Avenue. The April 20, 2012 Jemko Invoice for the facility stated "Diesel is down, Remove from manhole/island to find interstitial and make accessible for monthly inspections."

II. Stipulated Exhibits

The parties hereby agree and accept the numbering system used below to identify the exhibits listed below. The parties additionally agree and accept that each party waives any objection pursuant to 40 C.F.R. §§ 22.22 and 22.23 to the admissibility of such exhibits into the record of the hearing to be held in this proceeding, and each party further consents to the admission of the exhibits listed below into the record of such hearing. The parties' consent to the admissibility of such documents is not intended, and should not be construed, as the parties waiving any objection regarding the appropriate weight to be given the documents.

1. **Complainant's Exhibit 5:** Inspection Report, dated February 26, 2007, for Valvo's Convenience & Gas.
2. **Complainant's Exhibit 7:** Inspection Report and photographs, dated October 22, 2008, for Valvo's Convenience & Gas.
3. **Complainant's Exhibit 8:** Inspection Report and photographs, dated March 15, 2010, for Hanover Convenience.
4. **Complainant's Exhibit 9:** Bulk Storage Database Search Details for Hanover Convenience.
5. **Complainant's Exhibit 10:** Inspection Report and photographs, dated March 15, 2010, for Valvo Transport.
6. **Complainant's Exhibit 11:** Bulk Storage Database Storage Search Results for Valvo Transport.
7. **Complainant's Exhibit 12:** Inspection Report and photographs, dated July 21, 2011, for Valvo's Convenience & Gas.
8. **Complainant's Exhibit 13:** Inspection Report and photographs, dated July 21, 2011, for Precision Transport, a/k/a Valvo Transport.

9. **Complainant's Exhibit 14:** Inspection Report, dated October 20, 2011, for Valvo's Convenience & Gas.
10. **Complainant's Exhibit 15:** Note to File from Paul Sacker to Precision Tran@roadrunner.com, dated June 4, 2008.
11. **Complainant's Exhibit 16:** Note to File from Paul Sacker re conversation with Stephen Valvo, dated June 4, 2008.
12. **Complainant's Exhibit 17:** Request for Information to Stephen Valvo and Valvo's Convenience & Gas, dated December 21, 2007.
13. **Complainant's Exhibit 18:** 2nd Notice – Response Overdue re Field Citation Number: II-UST-FC-497EC, dated January 8, 2010, for Valvo's Convenience & Gas.
14. **Complainant's Exhibit 19:** Request for Information, dated May 10, 2010, for Valvo Transport, Hanover Convenience and Valvo's Convenience & Gas.
15. **Complainant's Exhibit 20:** Request for Extension to Respond to Information Pursuant to Section 9005 of Solid Waste Disposal Act, as amended, dated June 7, 2010.
16. **Complainant's Exhibit 21:** 2nd Notice Response Overdue, Non-Response to Request for Information, dated August 10, 2010.
17. **Complainant's Exhibit 22:** Notice of Violation, Overdue Request for Information, dated September 23, 2010, for Valvo Transport, Hanover Convenience, and Valvo's Convenience & Gas.
18. **Complainant's Exhibit 23:** Notice of Violation for Underground Storage Tank Systems, dated December 16, 2010, for Valvo Transport, Hanover Convenience and Valvo's Convenience & Gas.
19. **Complainant's Exhibit 24:** Petroleum Bulk Storage Report Forms faxed to Paul Chiaravalloti, dated December 23, 2010.
20. **Complainant's Exhibit 25:** Letter to Paul Chiaravalloti, dated January 3, 2011, from

- Beverly Kolenberg, re Notices of Violation for Valvo's Underground Storage Tank Systems.
21. **Complainant's Exhibit 26:** Letter from Paul Chiaravalloti, dated January 13, 2011, to Paul Sacker re Request for Information: RCRA-UST-IR-10-024.
 22. **Complainant's Exhibit 27:** Faxed response from Paul Chiaravalloti, dated January 13, 2011, re Request for Information: RCRA-UST-IR-10-024.
 23. **Complainant's Exhibit 28:** Note to File re Stephen Valvo Facilities, dated January 14, 2011, by Paul Sacker.
 24. **Complainant's Exhibit 29:** Faxed copy of PBS Certificate for Valvo's Convenience & Gas from from Paul Chiaravalloti, dated January 21, 2011.
 25. **Complainant's Exhibit 30:** Fax from Paul Sacker to Paul Chiaravalloti, dated February 10, 2011, Compliance Steps for Valvo Matter.
 26. **Complainant's Exhibit 31:** Letter to Paul Chiaravalloti, dated February 11, 2011, from Beverly Kolenberg to follow-up on Notices of Violation for Underground Tank Systems, dated December 16, 2010.
 27. **Complainant's Exhibit 32:** Faxed response from Paul Chiaravalloti, dated March 22, 2011, to Paul Sacker, 4 pages with cover sheet of interstitial testing results.
 28. **Complainant's Exhibit 34:** Fax from Paul Chiaravalloti, dated July 1, 2011, failed test results, 3 pages, including cover sheet.
 29. **Complainant's Exhibit 35:** Fax from Maria Szarpa, dated July 8, 2011, with test results from JEMKO and NOCO, 5 pages.
 30. **Complainant's Exhibit 36:** Fax from JEMKO, dated July 8, 2011, stating that the cathodic readings for tank four were failing.
 31. **Complainant's Exhibit 37:** Original Inspection Report for Valvo's Convenience & Gas and Precision Transport faxed by Paul Sacker to Paul Chiaravalloti, dated July 25, 2011.
 32. **Complainant's Exhibit 38:** Fax from Paul Chiaravalloti, dated August 12, 2011, to Paul

Sacker with NOCO Invoice.

33. **Complainant's Exhibit 39:** Fax from Paul Chiaravalloti, dated August 25, 2011, to Beverly Kolenberg, re Valvo case.
34. **Complainant's Exhibit 40:** Request for Additional Information, dated August 31, 2011, to Stephen Valvo related to Valvo Transport, Hanover Convenience and Valvo's Convenience & Gas.
35. **Complainant's Exhibit 41:** Fax from Paul Chiaravalloti, dated September 23, 2011, to Beverly Kolenberg regarding response to information RCRA-UST-IR-2010-24.
36. **Complainant's Exhibit 42:** NYSDEC Petroleum Bulk Storage Program Information Report, 5 pages.

III. Stipulated Testimony

The parties are not at this time prepared to agree to and accept the anticipated testimony of their respective witnesses.

FOR COMPLAINANT:


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U.S. Environmental Protection Agency
Region 2

FOR RESPONDENTS:


Paul A. Chiaravalloti
Counsel for Respondents
Valvo's Convenience & Gas, Inc. and
Stephen M. Valvo, Individually