

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION II

IN THE MATTER OF: )

Sunoco Retail LLC )

Respondent )

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) Docket No. RCRA-02-2020-7702

) **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 operator of Underground Storage Tanks (“USTs”) as indicated at the following locations:

- Monroe Mobil #0179-5905/23013, 413 North Main St., Monroe, NY
- Wasco Service Station, 37 Westchester Ave., Port Chester, NY
- Walden Mobil #0848, 20 East Main St., Walden, NY
- Wilson Field Mobil #0609-1789/#2320, 228 Dolson Ave., Middletown, NY

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. §280.2(c)(1)(i) requires all UST system owners or operators to provide spill prevention equipment for USTs that receive more than 25 gallons of product at a time to prevent spilling associated with product transfer to the UST system. Owners and 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). Furthermore, 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.

During a December 19, 2018 UST inspection of the facility located at 413 North Main St., Monroe, NY, the inspector noted that the four spill buckets associated with the USTs had undergone a hydrostatic test on September 25, 2018. However, the buckets for USTs # 7, 8 and 10 (two regular gasoline tanks and the drone premium gasoline tank) failed to pass the tests. No documentation was provided to the inspector indicating whether the failed spill prevention devices were subsequently repaired or replaced. In addition, the USTs were still being operated at the time of the inspection, implying that they were still receiving deliveries.

On May 24, 2019, EPA sent a NOV-IRL to Respondent requesting that Respondent provide documentation that the failed spill prevention devices noted above were replaced or repaired, including invoices or receipts along with results of new hydrostatic tightness tests. In addition, Respondent was asked to verify if deliveries of fuel to these three USTs continued in the period prior to the spill prevention devices being repaired or replaced.

Respondent's July 24, 2019 response to the NOV-IRL provided documentation that the spill prevention buckets for USTs # 7, 8 and 10 were replaced on November 30, 2018 and that they passed hydrostatic tests on December 14, 2018. It did not address EPA's question about the continuance of deliveries during the period between the failed hydrostatic tests and the repair. EPA submitted a follow-up request by e-mail on July 31, 2019 asking Respondent to verify that deliveries for the period between the failed tests and repairs continued and to provide product inventory logs. On August 14, 2019, Respondent provided the inventory logs showing that the two regular tanks in total received close to 240,000 gallons of product and that the manifolded tank system that contained the super gasoline drone tank received over 40,000 gallons of product during the period in question.

Respondent's failure to maintain adequate spill buckets for three of its USTs during a period in which they received significant amounts of product from at least September 25, 2018 through December 14, 2018 (the date new buckets were tested for integrity) is a violation of 40 C.F.R. §280.20(c)(1)(i).

- b.) As stated above, 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. Furthermore, 40 C.F.R. §280.35(b)(1) requires that the first such test must have occurred by October 13, 2018. During the November 15, 2018 UST inspection of the facility located at 20 East Main St., Walden, NY, the inspector was provided hydrostatic test results for the three UST spill buckets dated December 3, 2018, which is after the October 13, 2018 deadline.

EPA's May 24, 2019 NOV-IRL requested that Respondent provide any prior hydrostatic testing results for the spill prevention devices on the three USTs at this facility for the period between October 13, 2015 (when the regulation first came into effect) and December 3, 2018. Respondent's July 24, 2019 response to the NOV-IRL stated that "Sunoco underwent several transformations within the environmental department during this time. Due to these transitions the testing was performed late." EPA submitted a follow-up request by e-mail on July 31, 2019 asking Respondent to verify that there were no earlier hydrostatic tests than the December 3, 2018 tests. On August 14, 2019, Respondent responded by stating "Confirmed there was not an earlier spill bucket test. Testing was late due to transformations within the environmental department during this time. Due to these transformations testing was performed late."

Respondent's failure to test the three spill buckets at its facility located at 20 East Main St., Walden, NY by the deadline of October 13, 2018 is a violation of 40 C.F.R. §280.35(b)(1).

- c.) 40 C.F.R. §280.41(b)(1)(i)(B) requires owners and operators of UST systems that use underground piping that routinely contains regulated substances and that was installed before April 11, 2016, have an annual line tightness tests conducted on each line in accordance with 40 C.F.R. §280.44(b) or have monthly monitoring conducted in accordance with 40 C.F.R. §280.44(c). During the September 21, 2018 UST inspection of the facility located at 228 Dolson Ave., Middletown, NY the inspector noted that the pressurized piping was monitored for releases monthly via liquid status sensors in the submersible containment sumps. No line tightness tests were provided to the inspector as an alternative to monthly release detection monitoring for the pressurized lines. Furthermore, the inspector observed that liquid status sensors in the western most regular gasoline sump and the premium gasoline sump were not positioned properly to allow for accurate monitoring. The sensors were too high (they must be at lowest point in the sump) and were not straight but hanging at an angle.

EPA's May 24, 2019 NOV-IRL requested that Respondent provide documentation (including photographic proof, if available) that the liquid status sensors had been adjusted for the regular gasoline and that the premium gasoline sumps were placed into a perfectly vertical position and were resting at the lowest point of the sump. Respondent's July 24, 2019 response to the NOV-IRL provided a work order and photos that showed the two sensors had been re-positioned properly. EPA submitted a follow-up request by e-mail on July 31, 2019 asking Respondent to verify the date that this occurred, and on August 14, 2019, Respondent provided a clearer invoice showing that the work occurred on September 24, 2018, three days after the inspection.

Respondent's failure to properly monitor the regular gasoline and super gasoline pressurized lines at its 228 Dolson Ave., Middletown, NY facility from at least September 21, 2018 through September 24, 2018 is a violation of 40 C.F.R. §280.41(b)(1)(i)(B).

- d.) 40 C.F.R. §280.41(b)(1)(i)(A) requires owners and operators of UST systems that use underground piping that routinely contains regulated substances to have an automatic line leak detector (ALLD) installed with its piping and to operate it in accordance with 40 C.F.R. §280.44(a) including providing an annual performance test. During the March 12, 2019 UST inspection of the facility located at 37 Westchester Ave., Port Chester, NY the inspector was not provided ALLD tests for the 8,000-gallon premium storage tank and the 8,000-gallon (master) regular gasoline storage tank. Subsequent e-mails to EPA from contractors in the employ of Respondent provided test results for these two ALLDs dated April 5, 2019 and stated that no tests were conducted in the twelve months prior to the inspection due to several issues. EPA's May 24, 2019 NOV-IRL requested that Respondent confirm that no ALLD test were conducted on these two USTs during the 12-month period prior to the inspection (March 12, 2018 through March 12, 2019). It also requested that Respondent provide the last ALLD test results on record prior to March 12, 2018, if available. Respondent's July 24, 2019 response to the NOV-IRL states that the ALLDs for the two pressurized lines in question "were not tested in 2018." EPA submitted a follow-up request by e-mail on July 31, 2019 asking Respondent to verify the two ALLDs in question were not tested between March 12, 2018 (12 months prior to the inspection) and April 5, 2019. Respondent's August 14, 2019 reply contained the statement that "No tests were conducted between March 12, 2018 and April 5, 2019."

Respondent's failure to annually test the ALLDs for its premium and (master) regular gasoline USTs located at its 37 Westchester Ave., Port Chester, NY facility between at least March 12, 2018 through April 5, 2019 is a violation of 40 C.F.R. §280.44(a).

2. The EPA and the Respondent agree that settlement of this matter for a penalty of **\$8,710**, 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) agrees 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.

Sunoco Retail LLC  
Docket No. RCRA-02-2020-7702

IT IS SO AGREED,

RESPONDENT:

Name of individual signing (print): Edward Pak

Title: \_\_\_\_\_  
Ed Pak, Senior Counsel  
Sunoco LP on behalf of  
Sunoco Retail LLC

Signature:  \_\_\_\_\_

Date: June 15, 2020

COMPLAINANT:

\_\_\_\_\_  
Dore LaPosta, Director  
Enforcement and Compliance Assistance Division

Date \_\_\_\_\_

Sunoco Retail LLC  
Docket No. RCRA-02-2020-7702

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