



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

APR 20 2017

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Article Number: 7015 3010 0001 6837 9627

Mr. Mark Sidebottom, President
MWS Enterprises, Inc.
4455 Genesee Street
Suite 524
Buffalo, New York 14225

Re: Underground Storage Tank (UST) Compliance Inspection of
Grand Island Gulf (Minitz Grand Island)
2211 Grand Island Blvd
Grand Island, NY 14072
NYDEC PBS #9-414379

Re: Underground Storage Tank (UST) Compliance Inspections of
Final Expedited Settlement
Docket No. RCRA-02-2017-7701

Dear Mr. Sidebottom:

The U.S. Environmental Protection Agency (EPA) Region 2 is in receipt of MWS Enterprises, Inc.'s penalty payment of \$2,830, 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 MWS Enterprises, 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 MWS Enterprise, 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

U.S. Environmental
Protection Agency-Region 2
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REGIONAL HEADQUARTERS
BUFFALO, NY

If you have any questions regarding this letter or any other related matter, please contact Paul Sacker at (212) 637-4237 or by e-mail at sacker.paul@epa.gov. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "S Carrea". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steve Carrea, Acting 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

b. During the November 18, 2015 UST inspection at the UST facility, an EPA contract inspector noted that the two USTs had been in temporary closure since at least November 2014. In addition, the inspector found that the 8,000-gallon super gasoline UST was monitored for releases via a Veeder Root TLS-350R, programmed to conduct statistical leak detection, and that the tank contained 8 ¾ inches of product via an inventory stick. The only monthly monitoring release detection record provided for this tank was dated July 24, 2015. Under 40 C.F.R. § 280.70(a) when an UST system is temporarily closed, owners and operators must continue operation and maintenance of any release detection unless the UST system is empty. The UST system is deemed empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the tank. The EPA issued an IRL on March 10, 2016 to Respondent requesting: (1) the release detection records for the 8000-gallon super gasoline tank for the period November 18, 2014 through March 25, 2016 (the date of receipt of the March 10, 2016 IRL) and (2) that the Respondent provide documentation that the tank was emptied at any time after the November 18, 2015 inspection through March 25, 2016. In an email from Respondent dated May 22, 2016, Respondent states that “the 8000-gallon Super tank is a single walled tank” and “that the station is closed and the tank is empty so there are no SCALD tests for this tank.” EPA pressed Respondent via a June 13, 2016 e-mail for evidence that the tank was indeed empty. Respondent submitted documentation on July 14, 2016 showing the tank was emptied on or about June 16, 2016. Based on the inspection findings and subsequent information requests and responses, which were reviewed by an EPA enforcement officer, the EPA determined that Respondent violated 40 C.F.R. § 280.70(a) by failing to properly conduct release detection for the 8000-gallon tank while it was in a state of temporary closure from at least November 1, 2014 through June 16, 2016.

2. The EPA and the Respondent agree that settlement of this matter for a penalty of \$2,830 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).

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.

4. 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 in the amount of \$2,830 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 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.

5. 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. 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.
7. Each party shall bear its own costs and fees, if any.
8. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing.

IT IS SO AGREED,

RESPONDENT:

Name of individual signing (print): Cindy Andrews
MWS Enterprises, Inc.

Title: VP of Marketing + Compliance

Signature: Cindy Andrews

Date: 3/22/2017

APPROVED BY EPA:

Kathleen Anderson

Kathleen Anderson, Acting Director
Division of Enforcement and Compliance Assistance

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Date _____

MWS Enterprises, Inc.
Docket No. RCRA-02-2017-7701

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: April 18, 2017

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MWS Enterprises, Inc.
Docket No, RCRA-02-2017-7701

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Expedited Settlement Agreement and Final Order bearing docket number RCRA-02-2017-7701, in the following manner to the respective addressees listed below:

Original and Copy
By Hand Delivery:

Office of the Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by Certified Mail/
Return Receipt Requested:

Mr. Mark Sidebottom, President
MWS Enterprises, Inc.
4455 Genesee Street
Suite 524
Buffalo, New York 14225

Dated: April 20, 2017

Alina Razafimanjandra