



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY
2012 NOV 20 P 12 15
REGIONAL COUNSEL
CLERK

November 20, 2012

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:

Enclosed for your records is the Consent Agreement and Final Order ("CA/FO") with the attached Stipulation and Order in the above-referenced case. As indicated in Paragraph 17 of the CA/FO, this settlement is subject to a special condition that required the approval of Valvo's Convenience & Gas' settlement by the Bankruptcy Court for the Western District of New York. The CA/FO and the Stipulation and Order which had been signed by the settling parties was served and filed with the Regional Hearing Clerk on October 4, 2012. The Stipulation and Order approving the settlement was signed by the Honorable Carl L. Bucki on November 2, 2012. Service of the complete set of settlement documents on the parties and Your Honor was delayed by the effects of Superstorm Sandy which slammed into New York on October 29. Region 2's office in Manhattan was closed until November 9, 2012.

Counsel for Respondents and Complaint appreciate your cooperation in this case. If you have any questions, I can be reached at (212) 637-3167 or by email is.kolenberg@epa.gov.

Respectfully submitted,

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

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel

Enclosure

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Paul A. Chiaravallotti, Esq.
Counsel for Respondents
1967 Wehrle Drive, Suite 1
Williamsville, New York 14221

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION 2

2012 NOV 20 P 12:17

HEARING
CLERK

-----X
In the Matter of :
Valvo's Convenience & Gas, Inc. :
And Stephen M. Valvo, Individually :
: :
: :
: :
: :
: :
Proceeding under Section 9006 of the :
Solid Waste Disposal Act, as amended :
-----X

**CONSENT AGREEMENT AND
FINAL ORDER**

Docket No. RCRA-02-2011-7507

PRELIMINARY STATEMENT

This administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (collectively referred to as "RCRA" or the "Act").

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA" or "Complainant") issued a "Complaint, Compliance Order, and Notice of Opportunity for Hearing" to Valvo's Convenience and Gas, Inc. and Stephen M. Valvo, individually, on June 3, 2011.

The initial Complaint alleged violations of Subtitle I of the Act and the regulations promulgated pursuant to the Act, codified in Volume 40 of the Code of Federal Regulations ("C.F.R.") Part 280, applicable to Respondents' underground storage tanks ("UST"s) at three facilities in Silver Creek, New York. The initial Complaint alleged that Respondents failed to maintain release detection for temporarily closed USTs that contained more than one inch of petroleum residue, failed to comply with permanent closure requirements for temporarily closed

USTs, failed to test cathodic corrosion protection systems every three years, failed to monitor for releases at least every 30 days, and failed to perform annual line tightness tests or monthly monitoring for pressurized piping in violation of the UST regulations at 40 C.F.R. Part 280. The initial Complaint proposed penalties of \$59,366.00 for violations at the facilities after July 30, 2009, the date that Valvo's Convenience & Gas filed a petition for relief under Chapter 11 of the Bankruptcy Code.

By entering into this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. § 22.18, the parties agree that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondents are Valvo's Convenience & Gas, Inc. and Stephen M. Valvo, individually.
2. Each Respondent is a "person" as that term is defined in Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and 40 C.F.R. § 280.12.
3. Each Respondent is and continues to be an "owner" and an "operator" of multiple "underground storage tanks" ("UST") or "UST systems," as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.
4. The UST systems are located at Valvo's Convenience & Gas and Valvo Transport at 1267 Routes 5 and 20 in Silver Creek, New York and the former Hanover Convenience facility at 351 Central Avenue in Silver Creek, New York (the "Facilities").
5. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, an authorized representative of EPA ("Inspector") first inspected Valvo's Convenience & Gas and Valvo Transport on February 26, 2007, and he reinspected the Valvo's Convenience & Gas facility on October 22,

2008. On August 10, 2007, the Inspector inspected the former Hanover Convenience facility. On March 15, 2010, the Inspector reinspected Valvo Transport and the former Hanover Convenience facility. A second Inspector inspected all the Facilities on July 21, 2011. On October 20, 2011, the Inspector again reinspected Valvo's Convenience & Gas and Valvo Transport. The purpose of all the inspections was to determine Respondents' compliance with the Act and the UST regulations (hereinafter collectively referred to "the Inspections").

6. On or about December 21, 2007, EPA sent an Information Request Letter ("IRL") to Respondents to determine the status of their compliance with the Act and 40 C.F.R. Part 280 at all the Facilities referenced above.

7. Respondent Valvo sent a partial response to the December 21, 2007 IRL on May 28, 2008. EPA deemed the response to be neither fully responsive nor complete. EPA issued a second IRL on May 10, 2010.

8. On July 30, 2009, Respondent Valvo's Convenience & Gas filed a Chapter 11 petition for bankruptcy in the Bankruptcy Court for the Western District of New York. In re Valvo's Convenience & Gas, Inc., No. 09-13546-CLB ("Bankruptcy Case"). The Bankruptcy Case is pending.

9. Respondent Valvo sent a response to the May 10, 2010 IRL on January 13, 2011. EPA issued additional information requests, including one recently in July 2012 seeking information about the Facilities.

10. Based on the Inspections and the IRL Responses, the Complainant issued the initial Complaint on June 3, 2011. Respondents filed an Answer and Affirmative Defenses on July 12, 2011.

11. On March 28, 2012, Complainant issued an Amended Complaint. Respondents filed an Amended Answer on April 19, 2012. The amount of the proposed penalty was unchanged in the Amended Complaint.

12. On August 22, 2012, Complainant issued a Second Amended Complaint (hereinafter “the Complaint”). The amount of the proposed penalty was unchanged in the Second Amended Complaint.

13. Complainant and Respondents agree to enter into this Consent Agreement pursuant to 40 C.F.R. §§ 22.18(b) with the terms and conditions set forth herein.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of the Act, 42 U.S.C. §6991e, and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §22.18, it is hereby agreed that:

1. For purposes of this proceeding, Respondents (a) admit the jurisdictional basis of this action, (b) neither admit nor deny the Findings of Fact and Conclusions of Law, above, (c) consent to the conditions specified in the Consent Agreement, and (d) consent to the issuance of the Final Order.

2. Respondent Valvo shall pay a civil penalty to EPA in the total amount of **TWO THOUSAND DOLLARS (\$2,000)**. Payment of the civil penalty shall be made by cashier’s or certified checks or by Electronic Funds Transfer (“EFT”). If payment is made by check, then the check shall be made payable to the “Treasurer, United States of America” and shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077

St. Louis, MO. 63197-9000

The check shall be identified with a notation thereon listing In the Matter of Valvo's

Convenience & Gas, Inc. and Stephen M. Valvo, individually, Docket No. RCRA-02-2011-

7507. If payment is made by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment:
68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency."
- 6) Name of Respondent: **In the Matter of Valvo's Convenience & Gas, Inc.
and Stephen M. Valvo, individually**
- 7) Case Number: RCRA-02-2011-7507

Payment of the \$2,000 civil penalty must be received from Respondent Valvo on or before sixty (60) calendar days after the Effective Date of this CA/FO (the due date). Whether the payment is made check or EFT, Respondent shall promptly thereafter furnish reasonable proof that each payment has been made to both:

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, N.Y. 10007-1866

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866
Attn: Karen Maples

- a. The failure of Respondent Valvo to pay the penalty in full according to the above

provisions will result in referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection or other appropriate action.

- b. If payment of the \$2,000 civil penalty is not received from Respondent Valvo on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c. A 6% per annum penalty also will be applied on any principal amount not paid by Respondent Valvo within 90 days of the due date.

3. Respondent Valvo's Convenience & Gas shall be subject to a civil penalty **in the amount of FOUR THOUSAND DOLLARS (\$4,000), which shall be treated as an allowed administrative expense claim of EPA in the amount of \$4,000 in the Bankruptcy Case, subject to the approval of the attached Stipulation and Order by the United States Bankruptcy Court for the Western District of New York.** If the Bankruptcy Case is dismissed, Valvo's Convenience & Gas shall make payment of the \$4,000 penalty to EPA within 60 days of the dismissal. Valvo's Convenience & Gas shall follow the payment instructions set forth in Paragraph 2 above.

4. Respondents shall operate any UST at its Facilities in full compliance with all applicable 40 C.F.R. Part 280 requirements and shall implement the following closure steps:

- a. Within 120 days of August 16, 2012, or no later than December 14, 2012, Respondents shall place the 2,000-gallon diesel UST at the Valvo's Convenience & Gas facility into permanent closure by removing it from the ground in accordance with 40 C.F.R. §§ 280.71 and 280.72.
- b. Respondents shall retain an environmental contractor to take appropriate soil samples immediately following the removal of the diesel UST, and such samples shall be analyzed using an accepted EPA method.
- c. Respondents shall provide the New York State Department of Environmental Conservation and EPA with at least 30 days prior written notice before any closure commences in order to provide these agencies an opportunity to witness the closure.
- d. Respondents shall arrange for a site assessment and closure report to be completed and shall provide EPA with the closure report and site assessment as soon as possible, but no later than 20 days after permanent closure of the diesel UST or by December 31, 2012, whichever date is earlier.

5. This CA/FO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

6. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon payment of the civil penalties in accordance with this Consent Agreement plus any interest and handling charges due, and compliance with Paragraph 4 of the Consent Agreement) the civil administrative claims alleged in the Complaint, subject only to the limitations codified in 40 C.F.R. § 22.31(a).

7. Respondent Valvo and Respondent Valvo's Convenience & Gas have read the Consent Agreement, understand its terms, find it to be reasonable and consent to its issuance and terms. Respondents consent to the issuance of the accompanying Final Order. Respondents agree that all the terms of settlement are set forth herein.

8. Respondents explicitly and knowingly consent to the assessment of the civil penalties as set forth in this Consent Agreement and agree to pay the penalties in accordance with the terms of this Consent Agreement.

9. By executing this Consent Agreement, Respondents explicitly waive their right to request or to seek any Hearing on the Complaint or on any of the allegations asserted therein, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

10. By executing this Consent Agreement, Respondents waive their right to appeal the proposed Final Order accompanying the Consent Agreement.

11. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative or legal proceeding except in one to enforce or achieve compliance with the terms of this Consent Agreement and its accompanying Final Order.

12. The undersigned signatory to this Consent Agreement for each Respondent certifies that he is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

13. The provisions of this CA/FO shall be binding upon Respondents, their officials, officers, agents, authorized representatives and successors or assigns.

14. Respondents explicitly waive any right they may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the EPA Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

15. Each party hereto agrees to bear its own costs and fees in this matter.

16. Respondents consent to service upon Respondents of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

17. If the Bankruptcy Court declines to approve the Stipulation and Order attached hereto, this CA/FO shall be null and void with respect to both Respondents and the parties shall not be bound hereunder; the parties shall have no liability to one another arising out of or in connection with this CA/FO, and this CAFO shall have no residual or probative effect or value and it shall be as if it had never been executed.

18. Pursuant to 40 C.F.R. §22.31(b), the Effective Date of the Final Order herein shall be the date when it is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

RESPONDENT: Valvo's Convenience & Gas, Inc.

BY: Stephen M. Valvo Date: 9/18/12

Name: STEPHEN M. VALVO

Title: President

RESPONDENT: Stephen M. Valvo,

BY: Stephen M Valvo Date: 9/18/12

Name: STEPHEN M VALVO

Title: President

COMPLAINANT: U.S. Environmental Protection Agency, Region 2

BY: _____ Date: _____

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

RESPONDENT: Stephen M. Valvo

BY: Stephen M Valvo Date: 9/18/12

Name: STEPHEN M VALVO

Title: President

COMPLAINANT: U.S. Environmental Protection Agency, Region 2

BY: [Signature] Date: 9/21/12

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

**In the Matter of Valvo's Convenience & Gas, Inc. and Stephen M. Valvo, individually
Docket No. RCRA-02-2011-7507**

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 9006 of RCRA 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: September 24 2012

**In the Matter of Valvo's Convenience & Gas, Inc. and Stephen M. Valvo, individually
Docket No. RCRA-02-2011-7507**

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk.
U.S. EPA- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Pouch Mail:

The Honorable M. Lisa Buschmann, Administrative Law Judge
EPA Office of Administrative Law Judges
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington, DC 20460-2001

Copy by Certified Mail Return Receipt Requested:

Paul A. Chiaravalloti, Esq.
Attorney for Respondents
1967 Wehrle Drive, Suite 1
Williamsville, NY 14221

Dated: October 4, 2012
New York, New York

Mary E. Cosrone

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re:

Valvo's Convenience & Gas, Inc.

Debtor(s)

Case No.: 1-09-13546-CLB

Chapter: 11

Tax ID: 16-1397109

NOTICE OF ENTRY

PLEASE TAKE NOTICE of the entry of an Order, duly entered in the within action in the Clerk's Office of the United States Bankruptcy Court, Western District of New York on **November 2, 2012**. The Clerk of Court of the United States Bankruptcy Court, Western District of New York, hereby certifies that a copy of the subject Order was sent to all parties in interest herein as required by the Bankruptcy Code, The Federal Rules of Bankruptcy Procedure.

Date: November 2, 2012

Lisa Bertino Beaser
Clerk of Court

Form nteentry

www.nywb.uscourts.gov

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NEW YORK

In Re:

VALVO'S CONVENIENCE & GAS, INC.,

Bk. No. 09-13546-CLB
Chapter 11

Debtor.

STIPULATION AND ORDER

WHEREAS, on July 30, 2012, the United States, on behalf of the United States Environmental Protection Agency ("EPA"), filed a motion ("Administrative Expense Motion") requesting that the Court make a determination that any penalties for Debtor's post-petition violations of the federal underground storage tank regulations, 40 C.F.R. Part 280 ("UST Regulations"), be accorded administrative expense priority under Section 503(b)(1)(A) of the Bankruptcy Code;

WHEREAS, the Administrative Expense Motion also requested that the Court abstain from determining whether the Debtor in fact violated the UST Regulations and, if so, the amount of the penalty for such violations, and allow those issues to be determined in the administrative proceeding filed by EPA against the Debtor and its principal, Stephen M. Valvo, on June 3, 2011, Valvo's Convenience & Gas, Inc. and Stephen M. Valvo, Individually, No. RCRA-02-2011-7507 ("EPA Administrative Proceeding"), in which EPA sought a penalty in the amount of \$59,366 for post-petition violations of the UST Regulations;

WHEREAS, the Court heard oral argument on the Administrative Expense Motion on August 29, 2012 and, for the reasons stated in the record at the oral argument, ruled (a) that it would abstain from determining whether the Debtor violated the UST Regulations and, if so, the

amount of the penalty, and allow those issues to be determined in the EPA Administrative Proceeding, and (b) that any penalties determined in the EPA Administrative Proceeding to be owed by the Debtor for post-petition violations of the UST Regulations would be given administrative expense priority in this bankruptcy proceeding, subject to the right of the Debtor to seek reconsideration of this determination if (a) any portion of the penalty awarded in the EPA Administrative Proceeding was for pre-petition violations of the UST Regulations or (b) either of the properties owned by the Debtor where the USTs are located, 351 Central Avenue, Silver Creek, New York and 1267 Routes 5 and 20, Silver Creek, New York, is not ultimately administered in this bankruptcy proceeding;

WHEREAS, EPA and the Debtor have entered into a Consent Agreement and Final Order in the EPA Administrative Proceeding, a copy of which is attached hereto, which provides, in pertinent part, subject to this Court's approval, that EPA will have an allowed administrative expense claim against the Debtor in the amount of \$4,000 for post-petition violations of the UST Regulations at the aforementioned Debtor-owned properties;

NOW, THEREFORE, upon the consent and agreement of the parties to this Stipulation and Order, it is hereby ORDERED as follows:

1. In resolution of the claim for administrative expenses set forth in the Administrative Expense Motion, the United States, on behalf of EPA, shall have an allowed administrative expense claim against the Debtor in the amount of \$4,000.

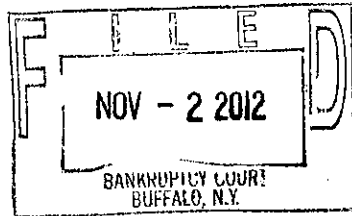
2. Upon confirmation of a plan, the United States' claim for administrative expenses set forth in the Administrative Expense Motion shall be discharged pursuant to Section 1141(d)(1)(A) of the Bankruptcy Code, unless such discharge is prohibited by Section 1141(d)(3) of the Code.

3. If this proceeding is converted to Chapter 7, this Stipulation and Order shall be binding on the Chapter 7 trustee.

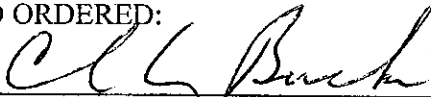
4. The adversary proceeding entitled Valvo's Convenience & Gas, Inc. v, EPA, A.P. No. 1-12-01012-CLB, which was initiated by the Debtor on or about March 6, 2012, seeking a determination that EPA's post-petition penalty claims against the Debtor were not entitled to administrative expense priority and were dischargeable, is hereby dismissed.

NOV - 2 2012

DATED: _____, 2012.



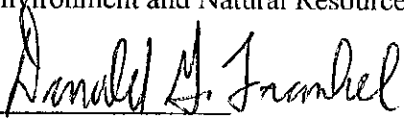
SO ORDERED:


HON. CARL L. BUCKI
United States Bankruptcy Judge

STIPULATED AND AGREED:

FOR THE UNITED STATES OF AMERICA:

ELLAN MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division


Donald G. Frankel
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
Department of Justice
One Gateway Center
Suite 616
Newton, MA 02458
(617) 450-0442

**In the Matter of Valvo's Convenience & Gas, Inc. and Stephen M. Valvo, individually
Docket No. RCRA-02-2011-7507**

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk.
U.S. EPA- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Pouch Mail:

The Honorable M. Lisa Buschmann, Administrative Law Judge
EPA Office of Administrative Law Judges
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington, DC 20460-2001

Copy by Certified Mail Return Receipt Requested:

Paul A. Chiaravalloti, Esq.
Attorney for Respondents
1967 Wehrle Drive, Suite 1
Williamsville, NY 14221

Dated: November 20, 2012
New York, New York

Baruch Kalenberg