

PAUL A. CHIARAVALLOTI, ESQ.

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WILLIAMSVILLE, NEW YORK 14221**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2012 APR 24 P 3:23
REGIONAL HEARING
CLERK

April 19, 2012

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007

**Re: Respondents' Amended Answer for Valvo Convenience and Gas, Inc. and
Stephen M. Valvo, individually
Docket No.: RCRA-02-2011-7507**

Dear Ms. Maples:

Enclosed herewith is the Respondent's Amended Answer to the Amended Complaint served in the above captioned matter. Please be advised that the Amended Complaint was mailed to the undersigned on March 29, 2012 and was received at my office on April 2, 2012.

Thank you for your kind attention to this matter.

Very truly yours,



Paul A. Chiaravalloti, Esq.

PAC/mls
enc.

cc: Honorable M. Lisa Buschmann
Russ Brauksieck
Beverly Kolenberg, Esq.
Jane B. Wolfe, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Valvo Convenience and Gas, Inc., and
Stephen M. Valvo, individually.

Respondents

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

AMENDED ANSWER

DOCKET NO. RCRA-02-2011-7507

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 APR 24 P 3:22
REGIONAL HEARING
CLERK

AMENDED ANSWER

The above named Respondents, through their attorney, Paul A. Chiaravalloti, Esq., answer the allegations set forth in the Amended and proposed Compliance Order of the Environmental Protection Agency as follows:

1. Same answer as in original response.
2. Same answer as in original response.
3. Admit.
4. Same answer as in original response.
5. Admit the allegations except that Respondents are unclear as to the meaning of "Facilities" contained in this allegation.
6. Admit the allegations except that Respondents are unclear as to the meaning of "Facility" contained in this allegation.
7. Same answer as in original response.
8. Same answer as in original response.
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47. Same answer as in original response.
48. Deny.
49. Same answer as in original response.
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87. Same answer as in original response.
88. Same answer as in original response.
89. Same answer as in original response.
90. Same answer as in original response.
91. Same answer as in original response.

AFFIRMATIVE DEFENSES

92. Respondents re-allege their responses to Paragraphs "1" through "91" with the same force and effect as if fully set forth herein.

93. Respondents have submitted paperwork to the EPA showing that the three active UST's at 351 Central Avenue are in compliance with agency regulations. It is important to note that these UST's were being operated by a Melissa Elwell between August 2006 and December 2010. Respondent Valvo was of the belief that during the aforesaid period the UST's were in compliance with EPA regulations. Copies of the relevant PBS certificate are annexed to Respondents Answer.

94. Respondent Valvo is in contact with the New York State Department of Environmental Conservation (DEC) to set a date on which a DEC agent is present when the Respondent pumps out residue greater than 1" from any of the five inactive pumps at 1267 Routes 5 and 20 and to have such residue properly disposed of.

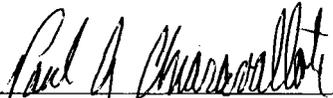
95. Respondent Valvo is willing to enter into a Compliance Order with respect to the three active tanks at 351 Central Avenue and the five inactive tanks at 1267 Routes 5 and 20.

96. The proposed penalty of \$59,366.00 set forth in the agency's Complaint is far too excessive and would put Respondents out of business. It is important to keep in mind that even with compromises reached with certain secured creditors in the Chapter 11 case of Respondent Valvo's Convenience & Gas, payments will exceed \$500,000.00 in the proposed plan of reorganization. Due to the aforesaid debt to be paid in the proposed plan of reorganization and ongoing liabilities such as significant real property taxes, the Respondents would have difficulty paying any penalty in this matter. However, Respondent Valvo's Convenience & Gas is willing to pay a \$2,000.00 penalty as an administrative expense within ten days following plan confirmation.

97. Respondents further request an informal conference by telephone in order to attempt settlement of this matter.

98. In the event that a settlement is not reached in the informal conference, Respondents request a formal hearing either by telephone or, if necessary, in person at the United States Attorney's Office in Buffalo, New York.

DATED: April 19, 2012

By, 

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As Attorney for above named Respondents
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has as of the date below caused to be mailed by first class mail, postage pre-paid, of the foregoing Amended Answer and notice of opportunity for hearing, bearing the Docket No. RCRA-02-2011-7507 upon the following:

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

Honorable M. Lisa Buschmann, Administrative Law Judge
U.S. EPA Office of the Hearing Clerk
Mailcode 1900L
1200 Pennsylvania Ave. NW
Washington, DC 20460

Russ Brauksieck, Chief
Facility Compliance Section
New York State Department of Environmental Conservation
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Beverly Kolenberg, Esq.
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New York, NY 10007-1866

Jane B. Wolfe, Esq.
United States Attorney's Office
138 Delaware Avenue
Buffalo, New York 14202

DATED: April 19, 2012



Paul A. Chiaravalloti, Esq.