

PAUL A. CHIARAVALLOTI, ESQ.

**1967 WEHRLE DRIVE, SUITE 1
WILLIAMSVILLE, NEW YORK 14221**

July 7, 2011

OVERNIGHT DELIVERY

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

**Re: Valvo Convenience and Gas, Inc. and Stephen M. Valvo, Individually
Docket No.: RCRA-02-2011-7507**

Dear Sir/Madam:

Enclosed herewith are an original and one (1) copy of Respondents' Answer in the above captioned matter. Because this Answer is due by July 8, 2011 to prevent the issuance of a default order, delivery of said Answer is being made by overnight delivery.

As set forth in the enclosed Answer, every effort will be made to settle this matter in such a manner that the Chapter 11 case of Valvo's Convenience & Gas, Inc. may proceed to plan confirmation.

Please be advised that Respondents reserve the right to file an amended answer pursuant to 40 CFR 22.15(e).

Thank you for your kind attention to this matter.

Very truly yours,


Paul A. Chiaravalloti, Esq.

U.S. ENVIRONMENTAL
PROTECTION AGENCY
2011 JUL 12 A 10:59
REGIONAL HEARING
CLERK

PAC/mls

cc: Beverly Kolenberg, Esq. (Via Overnight Delivery)
Jane B. Wolfe, Esq.
Russ Brauksieck

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

ANSWER

DOCKET NO. RCRA-02-2011-7507

U.S. ENVIRONMENTAL
PROTECTION AGENCY
2011 JUL 12 A 10:55
HEARINGS
CLERK

ANSWER

The above named Respondents answer the allegations set forth in this Complaint and proposed Compliance Order of the Environmental Protection Agency as follows:

1. Admit.
2. Respondents lack knowledge of this allegation.
3. Admit that one of the main Respondents is Valvo Convenience and Gas, Inc.; but deny that the main Respondent is the owner of real property at 1267 Routes 5 and 20 and 351 Central Avenue. The owner of said properties is Valvo's Convenience & Gas, Inc.
4. Admit that Stephen M. Valvo is the other Respondent in this action; Respondent is unclear as to references to "Valvo Transport Facility" and "Hanover Convenience Facility."
5. Deny that Respondent Valvo Convenience and Gas, Inc. filed a Chapter 11 petition. Rather, Valvo's Convenience & Gas, Inc. filed a Chapter 11 petition. Further, Respondents are unclear as to the reference to the "Facilities" contained in this allegation.
6. Admit the allegations therein except for the reference to the "Valvo Convenience & Gas Facility."

7. Admit that there are two (2) other USTs on the property located at 1267 Routes 5 and 20, Silver Creek, New York; deny the allegation that Valvo Convenience & Gas own these UST's and refer to pages 9 and 11 of the First Amended Disclosure Statement [p.9: "existence of five (5) underground...tanks at this location" and p.11: Debtor's properties located at 1267 Routes 5 and 20 and at 351 Central Avenue."]. Respondents again are unclear as to reference to the "Valvo Transport Facility."

8. Admit the allegations therein except for reference to the "Hanover Convenience Facility."

9. Respondents lack knowledge of this allegation.

10. Respondents lack knowledge of this allegation.

11. Respondents lack knowledge of this allegation.

12. Respondents lack knowledge of this allegation.

13. Respondents lack knowledge of this allegation.

14. Respondents lack knowledge of this allegation.

15. Respondents lack knowledge of this allegation.

16. Respondents lack knowledge of this allegation.

17. Respondents lack knowledge of this allegation.

18. Respondents lack knowledge of this allegation.

19. Respondents lack knowledge of this allegation.

20. Respondents lack knowledge of this allegation.

21. Respondents lack knowledge of this allegation.

22. Respondent Valvo cannot recall that there was an inspection on February 26, 2007.

23. Respondents lack knowledge of this allegation.

24. Respondent Valvo cannot recall that there was an inspection on October 22, 2008.

25. Respondent Valvo cannot recall that there was an inspection on February 26, 2007.

26. Respondents lack knowledge of this allegation.

27. Respondent Valvo cannot recall that there was an inspection on March 15, 2010.

28. Respondents lack knowledge of this allegation.

29. Respondents lack knowledge of this allegation.

30. Respondent Valvo cannot recall that there was an inspection on February 26, 2007.
31. Respondents lack knowledge of this allegation.
32. Respondent Valvo cannot recall that there was an inspection on March 15, 2010.
33. Respondents lack knowledge of this allegation.
34. Respondents lack knowledge of this allegation.
35. Respondents submitted a response to the second IRL which made a good faith attempt to answer 22 inquiries.
36. Respondents re-alleges their responses to Paragraphs "1" through "35" with the same force and effect as if fully set forth herein.
37. Respondents lack knowledge of this allegation.
38. Respondents lack knowledge of this allegation.
39. Respondents lack knowledge of this allegation.
40. Admit.
41. Respondents lack knowledge of this allegation.
42. Respondents lack knowledge of this allegation.
43. Admit that the gasoline USTs had been closed for some time; Respondent Valvo cannot recall that an inspection took place on October 22, 2008 and cannot recall that a diesel fuel UST had been removed in 2000.
44. Respondents lack knowledge of this allegation.
45. Respondents lack knowledge of this allegation.
46. Admit that a letter was sent to the EPA on February 17, 2010; but lack knowledge as to the other allegations therein.
47. Respondents lack knowledge of this allegation.
48. Respondents lack knowledge of this allegation.
49. Respondents re-alleges their responses to Paragraphs "1" through "48" with the same force and effect as if fully set forth herein.
50. Respondents lack knowledge of this allegation.
51. Respondents lack knowledge of this allegation.
52. Respondents lack knowledge of this allegation.

53. Again, Respondent Valvo cannot recall if an inspection occurred on February 26, 2007.

54. Again, Respondent Valvo cannot recall if an inspection occurred on March 15, 2010.

55. Again, Respondent Valvo cannot recall if an inspection occurred on February 26, 2007 and March 15, 2010.

56. Admit; however Respondent Valvo cannot recall exact dates of inspection.

57. Respondents lack knowledge of this allegation.

58. Respondents lack knowledge of this allegation.

59. Respondents lack knowledge of this allegation and state that Respondent Valvo is making and will continue to make efforts to comply with EPA regulations.

60. Respondents lack knowledge of this allegation and state that Respondent Valvo is making and will continue to make efforts to comply with EPA regulations.

61. Respondents re-allege this responses to Paragraphs "1" through "60" with the same force and effect as if fully set forth herein.

62. Respondents lack knowledge of this allegation.

63. Again, Respondent Valvo cannot recall if an inspection occurred on February 26, 2007 and March 15, 2010.

64. Again, Respondent Valvo cannot recall if an inspection occurred on March 15, 2010.

65. Respondents lack knowledge of this allegation and state that Respondent Valvo is making and will continue to make efforts to comply with EPA regulations.

66. Respondents re-allege their responses to Paragraphs "1" through "65" with the same force and effect as if fully set forth herein.

67. Respondents lack knowledge of this allegation.

68. Respondent Valvo cannot locate the PBS application and his copy of a May 15, 2008 response to the EPA's IRL.

69. Respondent Valvo cannot recall that there was an inspection on February 26, 2007.

70. Respondent Valvo cannot recall that there was an inspection on March 15, 2010.

71. Respondents lack knowledge of this allegation and state that Respondent Valvo is making and will continue to make efforts to comply with EPA regulations.

72. Respondents re-allege their responses to Paragraphs "1" through "71" with the same force and effect as if fully set forth herein.

73. Respondents lack knowledge of this allegation.

74. Admit.

75. Respondents lack knowledge of this allegation.

76. Respondent Valvo cannot recall that there was an inspection on August 10, 2007.

77. Respondent Valvo cannot recall that there was an inspection on March 15, 2010.

78. Respondent Valvo was of the belief that the operator of the three tanks at 351 Central Avenue was following EPA regulations.

79. Respondents lack knowledge of this allegation.

80. Respondents lack knowledge of this allegation.

81. Respondents re-allege their responses to Paragraphs "1" through "80" with the same force and effect as if fully set forth herein.

82. Respondents lack knowledge of this allegation.

83. Respondent Valvo cannot recall that there was an inspection on August 10, 2007

84. Respondent Valvo cannot recall that there was an inspection on March 15, 2010.

85. Respondents lack knowledge of this allegation.

86. Respondents re-allege their responses to Paragraphs "1" through "85" with the same force and effect as if fully set forth herein.

87. Respondents lack knowledge of this allegation.

88. Respondent Valvo cannot recall that there was an inspection on August 10, 2007

89. Respondent Valvo cannot recall that there was an inspection on March 15, 2010.

90. Admit.

91. Respondents lack knowledge of this allegation.

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 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 Convenience & Gas is willing to pay a \$1,000.00 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.



PBS Number
9-425508

New York State Department of Environmental Conservation
PETROLEUM BULK STORAGE CERTIFICATE
625 Broadway, 11th Floor, Albany, NY 12233-7020 Phone: 518-402-9553

Region 9 NYSDEC - PBS Unit
270 Michigan Avenue
Buffalo, NY 14203-2999
(716) 851-7220

TANK NUMBER	TANK LOCATION	DATE INSTALLED	TANK TYPE	CAPACITY (GALLONS)	DATE LAST TESTED	TESTING DUE DATE
1	Underground	06/01/1991	Steel/Carbon Steel/Iron	8,000		
2	Underground	06/01/1991	Steel/Carbon Steel/Iron	12,000		
3	Underground	06/01/1991	Steel/Carbon Steel/Iron	1,000		

* Aboveground tanks require monthly visual inspections and may need documented internal inspections as described in 6 NYCRR Part 613

OWNER:
STEVE VALVO
RTS. 5 & 20 C/O PO BOX 271
SILVER CREEK, 14136

SITE:
HANOVER CONVENIENCE
351 CENTRAL AVE
SILVER CREEK, NY 14136

OPERATOR: MELISSA ELLWELL
(716) 679-8900
EMERGENCY CONTACT: DALE ELWELL
(716) 679-8060

MAILING CORRESPONDENCE:

ISSUED BY: Commissioner
Denise M. Sheehan
PBS NUMBER: 9-425508
DATE ISSUED: 08/24/2006
EXPIRATION DATE: 09/17/2011
FEE PAID: \$500.00

MELISSA ELLWELL
HANOVER CONVENIENCE
351 CENTRAL AVE
SILVER CREEK, NY 14136

As an authorized representative of the above named facility, I affirm under penalty of perjury that the information displayed on this form is correct to the best of my knowledge. Additionally, I recognize that I am responsible for assuring that this facility is in compliance with all sections of 6 NYCRR Parts 612, 613 and 614, and applicable sections of 6 NYCRR Subpart 360-14 (used oil tanks only), not just those cited below:

- The facility must be re-registered if there is a transfer of ownership.
- The Department must be notified within 30 days prior to adding, replacing, reconditioning, or permanently closing a stationary tank.
- The facility must be operated in accordance with the code for storing petroleum, 6NYCRR Part 613.
- Any new facility or substantially modified facility must comply with 6NYCRR Part 614.
- **This certificate must be signed and posted on the premises at all times.** Posting must be at the tank, at the entrance of the facility, or the main office where the storage tanks are located.
- Any person with knowledge of a spill, leak or discharge must report the incident to DEC within two hours (1-800-457-7362).

Melissa Ellwell 8/28/06
Signature of Representative/ Owner Date

Denise M. Sheehan



PBS Number
9-425508

New York State Department of Environmental Conservation
PETROLEUM BULK STORAGE CERTIFICATE
625 Broadway, 11th Floor, Albany, NY 12233-7020 Phone: 518-402-8553

Region 9 NYSDEC - PBS Unit
270 Michigan Avenue
Buffalo, NY 14203-2999
(716) 851-7220

<u>TANK NUMBER</u>	<u>TANK LOCATION</u>	<u>DATE INSTALLED</u>	<u>TANK TYPE</u>	<u>PRODUCT STORED</u>	<u>CAPACITY (GALLONS)</u>	<u>DATE LAST TESTED</u>	<u>TESTING DUE DATE</u>
	Underground	06/01/1991	Steel/Carbon Steel/Iron	Gasoline/Ethanol	8,000		06/01/2001
	Underground	06/01/1991	Steel/Carbon Steel/Iron	Gasoline/Ethanol	12,000		06/01/2001
	Underground	06/01/1991	Steel/Carbon Steel/Iron	Gasoline/Ethanol	1,000		

* Aboveground tanks require monthly visual inspections and may need documented internal inspections as described in 6 NYCRR Part 613

OWNER:
STEVE VALVO
RTS. 5 & 20, PO BOX 225
SILVER CREEK, NY 14136

SITE:
VALVO CONVENIENCE & GAS INC.
351 CENTRAL AVENUE

SILVER CREEK, NY 14136

ON-SITE OPERATOR: STEVE VALVO
(716) 818-2994
PRIMARY OPERATOR:
EMERGENCY OPERATOR: STEVE VALVO
CONTACT: (716) 818-2994

MAILING CORRESPONDENCE:

STEVE VALVO
VALVO CONVENIENCE & GAS INC.
351 CENTRAL AVENUE
P.O. BOX 225
SILVER CREEK, NY 14136

ISSUED BY:

PBS NUMBER: 9-425508
DATE ISSUED: 01/06/2011
EXPIRATION DATE: 09/17/2016
FEE PAID: \$500.00

As an authorized representative of the above named facility, I affirm under penalty of perjury that the information displayed on this form is correct to the best of my knowledge. Additionally, I recognize that I am responsible for assuring that this facility is in compliance with all sections of 6 NYCRR Parts 612, 613 and 614, and applicable sections of 6 NYCRR Subpart 374-2 (used oil tanks only), not just those cited below:

- The facility must be re-registered if there is a transfer of ownership.
- The Department must be notified within 30 days prior to adding, replacing, reconditioning, or permanently closing a stationary tank.
- The facility must be operated in accordance with the code for storing petroleum, 6 NYCRR Part 613.
- Any new facility or substantially modified facility must comply with 6 NYCRR Part 614.
- This certificate must be signed and posted on the premises at all times. Posting must be at the tank, at the entrance of the facility, or the main office where the storage tanks are located.
- Any person with knowledge of a spill, leak or discharge must report the incident to DEC within two hours (1-800-457-3362).

Signature of Representative/Owner

STEPHEN M VALVO

Name and Title of Authorized Representative/Owner (Please Print)