

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION II**

2017 FEB 21 10 30 AM

IN THE MATTER OF:

Figaro Holdings LLC,

Respondent

Docket No. RCRA-02-2017-7708

**EXPEDITED SETTLEMENT
AGREEMENT AND
FINAL ORDER**

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency (“EPA”) has determined that Figaro Holdings LLC (henceforth the “Respondent”), owner of the Underground Storage Tanks (“USTs”) at the facility located at Owego Convenience Store 115 Southside Drive, Owego, NY (the “Facility”) 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. § 280.45 requires owners and/or operators of USTs to maintain monthly records of release detection monitoring for at least twelve months.

During the November 21, 2016 UST inspection of the Facility, the inspector noted that the tanks and pressurized lines were monitored for releases monthly via a Veeder Root TLS-350R. The unit monitored the tanks for continuous statistical leak detection (“CSLD”) and both the tanks and lines for electronic interstitial monitoring (EIM). However, the inspector was not provided historical release detection records for either the tanks or the pressurized lines for the previous twelve months.

EPA’s February 21, 2017 information request letter (“IRL”) to the UST operator, Shaukat LLC d/b/a Owego Convenience Store (the “UST Operator”), requested release detection records for the tanks and lines for the twelve months prior to the inspection until receipt of the IRL, which occurred on February 25, 2017. On February 28, 2017, EPA Enforcement Officer Paul Sacker was called by Jay Sethi, employee of the UST Operator and the manager at the Facility. Mr. Sethi admitted the Facility did not maintain release detection records prior to the inspection. Respondent’s April 19, 2017 IRL response (“April IRL”) only provided release detection records for the tanks and lines starting February 2, 2017 through April 18, 2017 and did not provide the records for the twelve months prior to the inspection. Further e-mail correspondence between Mr. Sacker and Mr. Sethi between May 1 through May 22, 2017 confirmed that the Facility was unable to provide records for the twelve months prior to the inspection and did not start maintaining records to until November 29, 2016. Therefore,

EPA determined that no records of monthly release detection were maintained prior to November 29, 2016 as required by 40 C.F.R. §280.45(c) for the USTs at the Facility. Respondent's failure, as the owner of the USTs, to maintain monthly release detection records for the tanks and lines from at least November 21, 2015 through November 29, 2016 is a violation 40 C.F.R. § 280.45.

- b) 40 C.F.R. § 280.50(c) requires owners and/or operators of USTs to investigate or report to the implementing agency (*i.e.* the New York State Department of Environmental Conservation ("NYSDEC")) a suspected release within 24 hours of any monitoring results from an interstitial monitor that indicate a release may have occurred unless (1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or (2) The leak is contained in the secondary containment and (i) Except as provided for in §280.43(g)(2)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and (ii) Any defective system equipment or component is immediately repaired or replaced.

During the November 21, 2016 UST inspection of the Facility, the inspector noted that the EIM sensor "L2" was displaying a "Fuel Alarm" indicating a potential release into the interstitial space of the regular gasoline UST. The inspector was notified by the onsite representative that this alarm had been displaying for at least one month prior to the inspection. A review of the NYSDEC Spill Incidents Database website indicates that no potential release was reported to them during the period of this alarm.

EPA's February 21, 2017 IRL to the UST Operator requested documentation of the steps that were taken by the Facility to investigate this alarm within 24 hours of its first being noted and to report any suspected releases to the NYSDEC as required by 40 C.F.R. § 280.50. Mr. Sethi stated during his February 28, 2017 phone conversation with Mr. Sacker that the alarm was from a faulty sensor and that as soon as he was made aware of it, he took steps to have it checked and repaired. Respondents' April IRL response provided an invoice from LiftSafe/FuelSafe, Inc. dated December 2, 2016 indicating that the interstitial monitoring sensor for the regular gasoline tank was replaced and a spill containment cover added.

Furthermore, between May 1, 2017 and May 22, 2017, Mr. Sacker corresponded with Mr. Sethi to determine what actions the Facility took in response to the alarm to ensure that there was no actual release. Mr. Sethi explained that he first drained water from the interstitial space to clear the alarm on or about November 29, 2016 and the interstitial monitoring sensor was eventually replaced on December 2, 2016. Therefore, EPA determined that no actions pursuant to 40 C.F.R. § 280.52(c) were taken between November 21, 2016 and November 29, 2016 in response to a potential release. Respondent's failure, as the owner of the USTs, to take immediate action to investigate a potential release into an interstitial space of an UST from at least November 21, 2016 through November 29, 2016 is a violation 40 C.F.R. § 280.50(c).

2. The EPA and the Respondent agree that settlement of this matter for a penalty of **\$4,260** without further proceedings is in the public interest.

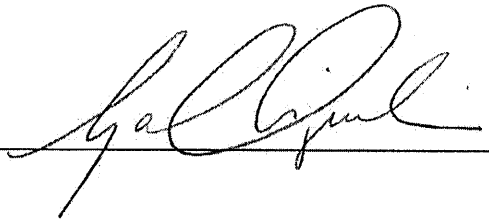
3. The EPA is authorized to enter into this Expedited Settlement Agreement and Final Order (“Agreement”) pursuant to section 9006 of RCRA and 40 C.F.R. § 22.13(b) and § 22.18(b)(2).
4. In signing this Agreement, the Respondent: (1) admits that the Respondent is subject to requirements listed above in 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 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 for full 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.
6. 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.
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. Each party shall bear its own costs and fees, if any.
9. 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.

IT IS SO AGREED,

RESPONDENTS:

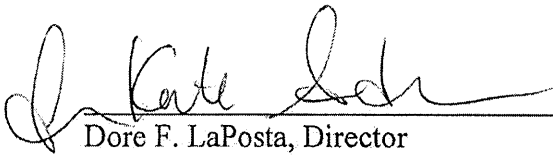
Name of individual signing (print): Gary C. Angiuli

Title: Owner

Signature: 

Date: 10/24/17


APPROVED BY EPA:


Dore F. LaPosta, Director
Division of Enforcement and Compliance Assistance

Date 10/26/17

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: October 31, 2017

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-02-2017-7708, 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:

Gary C. Angiuli, Esq., Owner
Figaro Holdings LLC
1481 Hylan Boulevard
Staten Island, NY 10305

Dated: Nov. 1, 2017

May E. Coyner