

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION II

U.S. Environmental Protection Agency-Region II

2018 JUL -5 AM 7:01

IN THE MATTER OF: )

S & H Food Mart, LLC )  
d/b/a Sammy Quick Stop )

Respondent )

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REGIONAL HEARING  
Docket No. RCRA-02-2018-7706

**EXPEDITED SETTLEMENT  
AGREEMENT AND  
FINAL ORDER**

**EXPEDITED SETTLEMENT AGREEMENT**

1. The U.S. Environmental Protection Agency ("EPA") has determined that S & H Food Mart, LLC (henceforth the "Respondent"), owner of the Underground Storage Tanks ("USTs") at the facility located at 361 Walnut St., Elmira, NY 14901 and doing business as Sammy Quick Stop (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. § 280.44(a) requires owner/operators of underground pressurized piping to install automatic line leak detectors and test them annually. During the January 11, 2017 UST inspection of the Facility, the inspector noted that the two pressurized lines had ALLDs but the last documented tests were dated August 7, 2015. The next tests were due August 7, 2016. On February 10, 2017, the inspector was provided by the then operator, Rinku Food Mart, Inc., the results of ALLD tests conducted on January 18, 2017, one week after the inspection. Respondent's reply to EPA's June 15, 2017 IRL indicated that no other ALLD test results were available between August 6, 2016 through January 18, 2017. By failing to conduct an ALLD test for the two pressurized lines within one year of a previous test, Respondent is in violation of 40 C.F.R. § 280.44(a) from at least August 7, 2016 through January 18, 2017.
  - b. 40 C.F.R. § 280.45 requires owner/operators of USTs and underground pressurized piping to maintain twelve months of release detection for each component. During the January 11, 2017 UST inspection of the facility, the inspector noted that the three USTs were monitored for releases via an automatic tank gauge conducting Continuous Statistical Leak Detection ("CSLD") and that the two pressurized lines were monitored for releases via liquid status sensors in the sump pits. However, the inspector was not provided monitoring records for the tanks for the months of October 2016 through December 2016 or any monthly release detection records (or a line tightness test as an alternative) for the twelve months prior to the inspection. Respondent's response to EPA's June 15, 2017 IRL did not provide any of the missing records. By failing to provide monthly monitoring records for the three USTs for the months of October through December 2016 and failing to provide monthly release detection records or, in the alternative, line tightness test results for the two pressurized lines for the twelve month period prior to the inspection, Respondent is in violation of 40

C.F.R. § 280.45 from at least January 11, 2016 through January 11, 2017.

- c. 40 C.F.R. § 280.50 (specifically § 280.50(b)(2) requires owners and operators of UST systems must report to the implementing agency within 24 hours, or another reasonable period specified by the implementing agency the New York State Department of Environmental Conservation (NYS DEC requires 2 hours), and follow the procedures in §280.52 if they observe unusual operating conditions (such as liquid in the interstitial space of secondarily contained systems), unless: the system equipment or component is found not to be releasing regulated substances to the environment or any defective system equipment or component is immediately repaired or replaced. During the January 11, 2017 UST inspection, the inspector noted that the liquid status sensors for the two pressurized lines were reporting a “fuel alarm” which could be an indication of a potential release, and meets the definition of an “unusual operating condition” that would require an immediate investigation and repairs and a report to the NYS DEC within 2 hours.

A check of the NYS DEC Spill Report database indicated that no spill report was made at this location up until at least February 24, 2017 when EPA notified NYS DEC of the alarms. Respondent’s reply to EPA’s June 15, 2017 IRL did not provide any documentation to show that Respondent reported a potential release to the NYS DEC in a timely manner. Additional correspondence between EPA and Beavers Petroleum Equipment, Inc. indicates that the sensors were found to be faulty and were reset on January 18, 2017 (one week after the alarms were noted by EPA) and not fully repaired until May 1, 2017. Therefore, Respondent’s failure to timely report a suspected release to the implementing agency is a violation of 40 C.F.R. § 280.50 from at least January 11, 2017 through January 18, 2017.

- d. 40 C.F.R. Part 280.93(a) requires that all UST system owners and operators must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. During the January 11, 2017 UST inspection of the facility, the EPA contractor inspector noted that Respondent did not demonstrate a financial responsibility mechanism that would provide third party bodily injury liability for its three USTs. Respondent’s reply to EPA’s June 15, 2017 IRL did not provide documentation of financial assurance prior to the inspection and indicates that Respondent has been unsuccessful in obtaining a current financial assurance mechanism that provides affordable third party bodily injury liability coverage as the tanks are too old. The company states it is working on having the current USTs removed and replaced with new USTs. Respondent’s failure to demonstrate financial assurance for the three USTs at the Facility, including at a minimum coverage for third party bodily injury liability, from at least five years prior to the inspection (January 11, 2012) through the present is a violation of 40 C.F.R. §280.93.

2. The EPA and the Respondent agree that settlement of this matter for a penalty of \$9,370 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 it may have to contest the determinations contained herein.

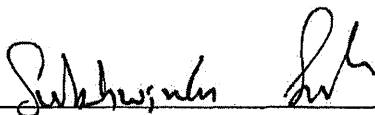
5. By its signature below, the Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that it has: (1) corrected the violations described above, (2) submitted true and accurate documentation of those corrections, (3) provided a deposit 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,

RESPONDENT:

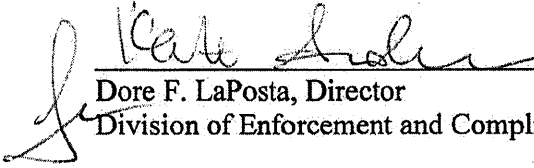
Name of individual signing (print): SUKHWINDER SINGH

Title: owner / President

Signature: 

Date: 6/28/18

APPROVED BY EPA:

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

Date JUN 28 2018

S & H Food Mart d/b/a Sammy Quick Mart  
Docket No. RCRA-02-2018-7706

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**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: July 3, 2018

Sammy Quick Stop  
Docket No. RCRA-02-2018-7706

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-02-2018-7706, 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, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Certified Mail/Return Receipt Requested

Article No.: 7017 1450 0000 0133 2367

Sukhwinder Singh  
Owner/President  
361 Walnut Street  
Elmira, NY 14901

Dated: July 3, 2018

Mary C Coogrove