

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:

FedEx Freight, Inc. &
GPT Montgomery Owner, LLC

Respondents

Docket No. RCRA-02-2019-7703

EXPEDITED SETTLEMENT
AGREEMENT AND
FINAL ORDER

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency ("EPA") has determined that the above named companies (henceforth the "Respondents"), are the owner and/or operator of an Underground Storage Tank ("UST") at the following location: FedEx Freight East, Inc., 191 Nellytown Road, Montgomery, NY (NYS PBS # 3-601609) (the "Facility").

Furthermore, EPA has determined that the Respondents 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. § 280.20(c)(1)(i) requires that all UST system owners or operators must use spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin).

During a September 20, 2018 UST inspection, EPA inspectors were notified that the spill bucket for the one 2,000-gallon diesel fuel storage UST failed a hydrostatic test on June 1, 2018 and was awaiting a replacement. Inspectors asked the Facility contact, the Fleet Maintenance Manager, if deliveries continued after the spill bucket failure was noted, and he admitted that they continued in the amount of about two a week. On October 4, 2018, the Environmental Engineer for FedEx Freight, Inc. sent an e-mail to Mr. Sacker stating, "The spill bucket was hydrostatically tested on 6/1/2018 at which point it was determined to have failed the test." He also stated that a new spill bucket was ordered but its replacement was delayed until 10/1/2018. On October 5, 2018, Mr. Sacker received confirmation that 53 deliveries were received during the period the spill bucket was awaiting replacement.

Respondents' failure to maintain an adequate spill bucket during a period the Facility was receiving deliveries from at least June 1, 2018 through October 1, 2018 is a violation of 40 C.F.R. § 280.20(c)(1)(i).

b.) 40 C.F.R. § 280.50(a)-(c) requires that UST owners and operators report a suspected release within 24 hours to the implementing agency (in this case New York State Department of Environmental Conservation or "NYS DEC") for conditions that may indicate a release including unusual operating conditions resulting from defective system equipment or defective components that are not immediately repaired or replaced. The failure of the spill bucket detected on June 1, 2018 constitutes an unusual operating condition that could have resulted in a release. As noted above, Respondents admitted that they failed to replace the defective spill bucket during a period of four months where deliveries were continuing. In an October 10, 2018 email exchange between EPA Enforcement Officer Paul Sacker and the Environmental Engineer for FedEx Freight, Inc., Mr. Sacker asked if Respondents had notified the NYS DEC of the potential release of product to the environment resulting from the failed spill bucket and if they had investigated for any contamination. Mr. Sacker was informed that Respondents had not notified the NYS DEC as of that date. On October 17, 2018, Respondents provided evidence that they had reported a potential release to the NYS DEC that day.

Respondents' failure to report a suspected release due to an unusual operating condition of spill prevention equipment to the implementing Agency from at least June 1, 2018 through October 17, 2018 is a violation of 40 C.F.R. § 280.50(a)-(c).

2. The EPA and the Respondents agree that settlement of this matter for a penalty of \$3,380, 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 Respondents (1) admit that the Respondents are subject to requirements listed above in Paragraph 1, (2) admit that the EPA has jurisdiction over the Respondents and the Respondents' conduct as described herein, (3) neither admit nor deny the factual and legal determinations contained herein, (4) for the purposes of settlement consent to the assessment of the penalty in paragraph (2) above, and (5) waive any right to contest the determinations contained herein.
5. By the signature below, the Respondents certify, subject to civil and criminal penalties for making a false submission to the United States Government, that they have: (1) corrected the alleged violations, (2) submitted true and accurate documentation of those corrections, (3) provided a deposit for payment of the civil penalty in Paragraph 2 above in accordance with the EPA penalty collection procedures provided to the Respondents, (4) submitted true and accurate proof of deposit for payment of the civil penalty with this Agreement, and (5) agreed to release the deposit for payment to the EPA upon entry of this Order. Full payment of the penalty in Paragraph 2 shall only resolve Respondents' 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.
6. No portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this Agreement shall be claimed by Respondents as a deduction for federal or state income tax purposes.

7. Upon signing and returning this Agreement to the EPA, the Respondents waive the opportunity for a hearing or appeal pursuant to section 9006(b) of RCRA or 40 C.F.R. part 22. In addition, if the Respondents are a Federal agency, the Respondents waive their right to confer with the Administrator pursuant to section 6001(b)(2) of RCRA.
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.

FedEx Freight, Inc. & GPT Montgomery Owner, LLC
Docket No. RCRA-02-2019-7703

IT IS SO AGREED,

RESPONDENTS:

Name of individual signing (print) Cheng Lee

On behalf of

EDWARD J. MATEY JR.
Vice President

Title: _____
GPT Montgomery Owner, LLC
521 Fifth Ave., 30th Floor
New York, NY 10175

Mgr. Environmental Services
FedEx Freight, Inc.
2200 Forward Drive, DC2219
Harrison, AZ 72601

Signature:

E. Matey Jr. /Date: 6/6/2019

Cheng Lee /Date: 5/24/2019

COMPLAINANT:

Dore F. LaPosta
Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division

Date: JUN 10 2019

FedEx Freight, Inc. & GPT Montgomery Owner, LLC
Docket No. RCRA-02-2019-7703

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: 6/19/2019

FedEx Freight, Inc. & GPT Montgomery Owner, LLC
Docket No, RCRA-02-2019-7703

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-02-2019-7703, 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:

Edward Matey, General Counsel
c/o Link Industrial Management LLC
GPT Montgomery Owner, LLC
220 Commerce Drive, Suite 400
Fort Washington, PA 19034

John A. Smith, President
FedEx Freight, Inc.
2200 Forward Drive, DC2219
Harrison, AZ 72601

Dated: JUN 21 2019, 2019 Aline Razafimanjandra



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUN 21 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Numbers: 7018 2290 0000 4961 2090 - 7018 2290 0000 49612106

Edward Matey, General Counsel
c/o Link Industrial Management LLC
GPT Montgomery Owner, LLC
220 Commerce Drive, Suite 400
Fort Washington, PA 19034

John A. Smith, President
FedEx Freight, Inc.
2200 Forward Drive, DC2219
Harrison, AZ 72601

Re: Final Expedited Settlement Agreement

Underground Storage Tank (UST) Compliance Inspection of:

FedEx Freight East, Inc.
191 Nellytown Road
Montgomery, NY
PBS#: 3-601609

Docket Number : RCRA-02-2019-7703

Dear Messrs. Matey and Smith:

The U.S. Environmental Protection Agency (EPA) Region 2 is in receipt of FedEx Freight Inc.'s penalty payment of \$3,380, the signed Expedited Settlement Agreement, and the documentation that the USTs at the above referenced facilities are now in compliance. By signing the Expedited Settlement Agreement, you have agreed to the terms of the Expedited Settlement Agreement and Final Order and have certified that all violations cited in the proposed Expedited Settlement Agreement were corrected.

Enclosed you will find a copy of the Expedited Settlement Agreement and Final Order issued by EPA. EPA has approved the Expedited Settlement Agreement based on your signed certification and supporting compliance documentation. EPA will take no further civil action against you for the violations listed in Proposed Expedited Settlement Agreement provided that all listed violations were timely corrected. EPA may choose to re-inspect the UST at the 191 Nellytown Road Montgomery, NY facility and if EPA identifies any violations of federal UST regulations during the re-inspection or from any other information obtained by EPA, such findings would be GPT Montgomery Owner, LLC and/or FedEx Freight Inc.'s second violation of federal underground storage tank (UST) regulations. A second offense may result in a civil or judicial action which can include seeking penalties of up to \$24,017 per UST system per day of violation.

If you have any questions regarding this letter or any other related matter, please contact Paul Sacker of my staff at (212) 637-4237 or by e-mail at sacker.paul@epa.gov. Thank you for your cooperation.

Sincerely,



Claudia Gutierrez, Team Leader
UST Compliance Team
Enforcement and Compliance Assistance Division

Enclosures

Expedited Settlement Agreement and Final Order

cc: Kevin Hale, Chief
Spill Prevention and Response Section
NYSDEC
625 Broadway 11th Floor
Albany, NY 12233-7020

Brendan Rose, Environmental Engineer
FedEx Freight, Inc.
2200 Forward Drive, DC2219
Harrison, AZ 72601

Hillary H. Steenberge, Attorney
FedEx Freight, Inc.
2200 Forward Drive, DC2219
Harrison, AZ 72601

GPT Montgomery Owner LLC
c/o Link Industrial Properties LLC
90 Park Avenue, 32th Floor
New York, NY 10016
Attn: General Counsel