



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JAN 15 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7018 1830 0000 9639 4838

William Paladino, Manager
9187 Group, LLC
295 Main Street, Suite 210
Buffalo, New York 14203

Re: Underground Storage Tank (UST) Compliance Inspection of UST facilities Owned by the
9187 Group, LLC

Expedited Settlement Agreement
Docket No. RCRA-02-2019-7705

Dear Mr. Paladino:

The U.S. Environmental Protection Agency (EPA) Region 2 is in receipt of 9187 Group, LLC's penalty payment of \$3420, 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 not seek a civil penalty for the violations listed in Proposed Expedited Settlement Agreement provided that all listed violations were timely corrected.

If you have any questions regarding this letter or any other related matter, please contact Hiep Tran of my staff at (212) 637-4280 or by e-mail at tran.hiep@epa.gov. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia", is written over a horizontal line.

Claudia Gutierrez, Team Leader
UST Team

Enclosure

cc: Kevin Hale
NYSDEC
Chief – Facility Compliance Section
Division of Environmental Remediation
625 Broadway 11th Floor
Albany, NY 12233-7020

9187 Group, LLC
Docket No, RCRA-02-2019-7705

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-02-2019-7705, 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:

William Paladino, Manager
9187 Group LLC
295 Main Street, Suite 210
Buffalo, New York 14203

Dated: Jan. 15, 2020

Mary P. Coyone

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION II**

IN THE MATTER OF:

9187 Group, LLC

Respondent

) **Docket No. RCRA-02-2019-7705**
)
)
) **EXPEDITED SETTLEMENT**
) **AGREEMENT AND**
) **FINAL ORDER**

EXPEDITED SETTLEMENT AGREEMENT

1. On or about November 12, 2015, the underground storage tanks ("USTs"), owned by the 9187 Group, LLC ("9187 Group") situated at 1395 Delaware Avenue, Buffalo, NY 14209 ("the facility") were inspected on behalf of the U.S. Environmental Protection Agency, Region 2 ("EPA"), by EPA's contract inspector, Mr. Jeffrey Blair, to determine their compliance with all applicable UST requirements under Subtitle I of the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C. §§ 6991 *et seq.*) and its implementing regulations (40 C.F.R. Part 280). A review of the inspection findings by EPA Enforcement Officer Mr. Hiep Tran, subsequent responses to the EPA Information Request Letters ("IRLs") submitted on behalf of the 9187 Group to the EPA and follow-up phone and e-mail inquiries with the 9187 Group's legal representatives demonstrate that the 9187 Group is in violation of the following requirements:

- a) 40 C.F.R. §280.93(a) requires that all UST system owners or 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 November 12, 2015 Inspection ("November 2015 Inspection") of the facility, the facility was not able to demonstrate that it had third-party liability insurance at the time of November 2015 Inspection. In an email sent to Mr. Tran on September 20, 2018, Ms. Lori Carbaugh, Legal Counsel of Ellicott Development, on behalf of the 9187 Group, stated that the 9187 Group was unable to obtain a third-party liability insurance due to the age of the USTs at its facility. The 9187 Group failed to have financial assurance, in violation of 40 C.F.R. § 280.93(a), for the USTs it owned at its facility from at least November 12, 2015, if not earlier, through the current date.

- b) 40 C.F.R. § 280.70(a) requires that when an UST system is temporarily closed, "owners and operators must continue operation and maintenance of ... any release detection ... if there is more than 2.5 centimeters (one inch) of materials, or 0.3 percent by weight of the total capacity of the UST system."

During the November 2015 Inspection at the facility, Mr. Blair noted the three USTs had been out of service for at least 2 years and contained significant levels of product: the 6,000-gallon Premium Gasoline Tank contained 8.5 inches of product, the 6,000-gallon Regular Gasoline Tank contained 7 inches of product and the 8,000-gallon Regular Gasoline Tank had 9.5 inches of product. Mr. Blair noted that there were no historical monthly release detection monitoring results for those tanks. In EPA's April 6, 2016 Notice of Violation ("NOV") and Information Request Letter (IRL) ("April 2016 NOV/IRL"), EPA sought copies of the monthly release detection monitoring records for the three tanks. In its June 10, 2016 Response ("June 2016 Response") to the April 2016 NOV/IRL, Ms. Kathleen Linhardt, on behalf of the 9187 Group, failed to provide any records of release detection monitoring records from this facility as requested. By failing to provide release detection monitoring for each of the three temporarily closed USTs each holding more than 2.5 centimeters (one inch) of materials, the 9187 Group is in violation of 40 C.F.R. § 280.70(a).

2. The EPA and the Respondent agree that settlement of this matter for a penalty of \$3,420 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 in Paragraph 1, above, (2) admits that the EPA has jurisdiction over the Respondent and the Respondent's conduct as alleged herein, (3) neither admits nor denies the factual determinations contained herein, (4) consents to the assessment of the penalty described 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 EPA has identified in Paragraph 1, above, (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 payment procedures provided to the Respondent, (4) submitted true and accurate proof of deposit for payment of the civil penalty with this Agreement, and (5) agrees to release the deposit for payment to the EPA upon entry of this Order.
6. Full payment of the penalty as described in Paragraph 2, above shall only resolve Respondent's liability for federal civil penalties for the violations 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 violation of law.
7. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

8. 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. In addition, if the Respondent is a Federal agency, the Respondent waives its right to confer with the Administrator pursuant to section 6001 (b)(2) of RCRA.
9. Each party shall bear its own costs and fees, if any.
10. 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,

Name (print): William Paladino

Title (print): Manager

Signature: 

Date 9/14/19

APPROVED BY EPA:



Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division

Date DEC 19 2019

In the Matter of 9187 Group, LLC
Docket No. RCRA-02-2019-7705

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Expedited Settlement Agreement. This Agreement, entered 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: January 14, 2020