

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:)
)
First Group America, Inc.,) Docket No. RCRA-02-2018-7702
d/b/a First Student, Inc.)
and First Transit, Inc.)
)
Respondent)
)
)
)

EXPEDITED SETTLEMENT AGREEMENT

- I. The U.S. Environmental Protection Agency (“EPA”) has determined that First Group America, Inc., /d/b/a First Student, Inc., and First Transit, Inc. (the “Respondent”), operator of the Underground Storage Tanks (“USTs”) located at the following sites, collectively referred to as

Chemung County Transit 1201 Clemens Center Pkwy Elmira, NY 14901 PBS #: 8-052132	First Student Inc. # 11505 62 Water St. Newton, NJ 07860 PDI#: NJ 004111
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the “Facilities,” 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 as follows:

First Student, Inc. – Newton, New Jersey Facility

- a. 40 C.F.R. §280.41(a) requires owners and operators of USTs to monitor tanks for releases at least every thirty days using an approved method as set forth in 40 C.F.R. § 280.43. During a July 14, 2016 UST Inspection EPA conducted of the Respondent’s First Student, Inc. facility located at 62 Water St., Newton, NJ (the “Newton Inspection”), the EPA Contract Inspector noted that the two USTs were monitored monthly for releases via an automatic tank gauge (“ATG”) that performed a static leak test (SLT). However, the records provided to the EPA Contract Inspector indicated invalid results for the diesel fuel UST (#00E2) from July 5, 2015 through August 30, 2015. EPA’s January 9, 2017 and May 5, 2017 IRLs requested Respondent to provide documentation to explain why the SLT results from July 1, 2015 through August 30, 2015 were invalid and provide documentation of any investigation of a potential release during that period and/or any repairs to the ATG. Respondent’s March 16, 2017 and June 8, 2017 IRL responses indicated that the UST was not in use during the month of July due to inactivity at the site and this is why fuel levels were too low for release detection (“RD”) to work properly. Therefore, Respondent’s failure to provide a valid RD method for the UST at the Newton, NJ facility for the period from at least July 5, 2015 through August 30, 2015 is a violation of 40 C.F.R. 280.41(a).

Chemung County Transit - Elmira, New York Facility

- b. 40 C.F.R. Part 280.45(c) requires that owner/operators of UST systems maintain written documentation of all calibration, maintenance, and repair of RD equipment permanently located on-site for at least one year after the servicing work is completed, or for another reasonable time period determined by the implementing agency. During a July 22, 2016 UST inspection EPA conducted of the Respondent's Chemung Transit, Inc. facility located at 1201 Clemens Center Parkway, Elmira, NY (the "Elmira Inspection"), the EPA Contract Inspector noted that the five USTs were monitored monthly for releases via electronic interstitial monitoring (EIM) and 12 months of records were provided. However, the August 17, 2015 EIM monitoring record for the primary 8,000-gallon diesel fuel UST (Tank #002) showed a failing result – "L1 D1 Annular Space Fuel Alarm" which indicated a potential release into the diesel UST's interstitial space. A check of the NYSDEC Spill Incidents Database did not indicate that a spill was reported at this location around the time of this alarm. EPA's January 9, 2017 and May 5, 2017 Information Request Letters ("IRLs") requested that Respondent provide documentation that this alarm was investigated within 24 hours of its detection, the results of said investigation, and whether any spill was reported to the NYSDEC. In addition, EPA requested that Respondent provide documentation of any repairs conducted on the RD system for diesel fuel UST #002. Respondent's March 16, 2017 and June 8, 2017 responses to EPA's IRLs indicated that Respondent determined that the EIM sensor was faulty and that Tank 002 was only monitored via visual observations until September 1, 2015 when the next passing record was generated. Respondent's IRL responses further indicated that no other form of valid RD was conducted and no valid records or maintenance documentation were kept. Respondent's failures to provide valid maintenance records to show any documentation of the specific steps it took to address the recorded failure of the EIM system is a violation of the requirements of 40 C.F.R. 280.45(c) from at least August 17, 2015 through September 1, 2015.
2. The EPA and the Respondent agree that settlement of this matter for a penalty of \$3,830 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 alleged herein, (3) neither admits nor denies the factual determinations contained herein, (4) consents to the assessment of this penalty, 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 alleged violations, (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) agrees to release the deposit for full payment to the EPA upon entry of this Order.

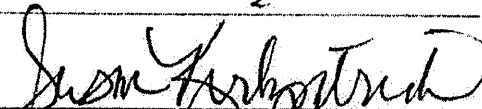
6. Full payment of the penalty in Paragraph 2 shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts described in Paragraph 1, above. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive 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 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): Susan Kirkpatrick

Title: Sr. Environmental Project & Program Mgr.

Signature: 
First Group America, Inc.,
d/b/a First Student, Inc.,
and First Transit, Inc.

Date: 2/20/2018

APPROVED BY EPA:


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

Date: 2/27/18

First Group America, Inc., d/b/a
First Student, Inc., and First Transit, Inc.
Docket No. RCRA-02-2018-7702

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: March 1, 2018