

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
EDWIN M. SPARKMAN)	
)	CASE NO. UST16-0060
RESPONDENT)	FACILITY: SELMER QUICK STOP

ORDER AND ASSESSMENT

NOW COMES Robert J. Martineau, Jr., Commissioner of the Tennessee Department of Environment and Conservation (the "Commissioner"), and states:

PARTIES

I.

Robert J. Martineau, Jr., is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (the "Department"), and among other duties and responsibilities, he is charged with the responsibility for administering and enforcing the Tennessee Petroleum Underground Storage Tank Act (the "Act"), Tennessee Code Annotated (hereinafter Tenn. Code Ann.) § 68-215-101 *et seq.*. Stanley R. Boyd is the duly appointed Director of the Underground Storage Tank Division (the "Division"). He has received written delegation from the Commissioner to administer and enforce particular aspects of the Act.

II.

Edwin M. Sparkman (hereinafter, the "Respondent"), is an individual registered as owner of three (3) underground storage tank systems (the "UST(s)") located at Selmer Quick Stop, 430 Peach Street, Selmer, Tennessee 38375. Service of process may be made on the Respondent at 1317 Mars Hill Road, Florence, Alabama 35630.

JURISDICTION

III.

When the Commissioner finds upon investigation that any provision of the Act is not being carried out, and that effective measures are not being taken to comply with the provisions of the Act, then pursuant to Tenn. Code Ann. § 68-215-114, he may issue an Order for correction to the responsible party, and this Order shall be complied with within the time limit specified in the Order. Tenn. Code Ann. § 68-215-121 authorizes the Commissioner to assess civil penalties against any person who violates or fails to comply with the Act. Pursuant to Tenn. Code Ann. §§ 68-215-107 and 113, Rules governing underground storage tanks have been promulgated pursuant to Tenn. Code Ann. § 68-215-107(f) Tenn. Compilation of the Rules. & Regulations. 0400-18-01 *et. seq.* (the "Rules").

IV.

The Respondent is a person as defined at Tenn. Code Ann. § 68-215-103(11) and has violated the Act as hereinafter stated.

FACTS

V.

On or about February 29, 2012, the Division received a Notification for Underground Storage Tanks form, signed by E. M. Sparkman, listing the Respondent as the owner of the three (3) underground storage tank (UST) systems located at Selmer Quick Stop, 430 Peach Street, Selmer, Tennessee 38375. The facility ID number is 8-550103.

VI.

On or about May 27, 2015, Division personnel contacted Mr. Jay Patel, manager, by phone and scheduled a compliance inspection to be conducted on June 19, 2015. On or about May 28, 2015, Division personnel also sent a letter confirming the inspection date.

VII.

On or about June 19, 2015, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

Violation #1: Failure to conduct annual line tightness test or do monthly monitoring on pressurized underground piping in accordance with Rule 0400-18-01-04(2)(b)1(ii). Specifically, annual line tightness test results for the three (3) tank systems were not available at the time of the inspection.

Violation #2: Failure to test line leak detectors annually in accordance with Rule 0400-18-01-.04(4)(a). Specifically, annual line leak detector test results for the three (3) tank systems were not available at the time of the inspection.

VIII.

On or about June 22, 2015, Division personnel sent a Results of Compliance Inspection – Action Required certified letter to Mr. Ed Sparkman. The letter cited the findings discovered during the inspection and required the Respondent to submit documentation to the Division by July 23, 2015, to demonstrate compliance. The letter was returned to the Jackson Environmental Field Office on July 15, 2015, as Unclaimed.

IX.

On or about July 21, 2015, the Division received compliance documentation addressing the correctable violation discovered at the time of inspection. The following documentation was received:

- Precision Line Tightness and Leak Detector Test Report dated July 20, 2015.

The documentation recorded that the violations discovered during the inspection had been addressed and the facility had returned to operational compliance.

X.

On or about July 24, 2015, Division personnel sent a Follow-up Letter and Enforcement Action Notice certified letter to the Respondent. The letter cited the findings discovered during the inspection and the response received by the Division to address the violations. This letter also notified the Respondent of a referral to enforcement action due to the severity of a violation discovered during the inspection. The letter was delivered on July 27, 2015, and signed for by B. Sparkman.

VIOLATIONS

XI.

By failing to operate petroleum underground storage tank system in compliance with the Act, the Respondent has violated Tenn. Code Ann. § 68-215-104(2), which states:

It is unlawful to: Construct, alter or operate a petroleum underground storage tank in violation of this chapter or the rules or regulations established pursuant thereto;

XII.

By failing to conduct annual line tightness testing or do monthly monitoring on pressurized underground piping, the Respondent has violated Rule 0400-18-01-.04(2)(b)1(ii), which states:

0400-18-01-.04 RELEASE DETECTION

(2) Requirements for petroleum UST systems

Owners and/or operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

(b) Piping

Underground piping that routinely contains petroleum shall be monitored for releases in a manner that meets one of the following requirements:

1. Pressurized piping.

Underground piping that conveys petroleum under pressure shall:

- (ii) Have an annual line tightness test conducted in accordance with subparagraph (4)(b) of this rule or have monthly monitoring conducted in accordance with subparagraph (4)(c) of this rule.

ORDER

XIII.

WHEREFORE, pursuant to the authority vested by Tenn. Code Ann. §§ 68-215-107, 68-215-114, and 68-215-121,

I, Stanley R. Boyd, acting as the authorized representative of the Commissioner, hereby issue the following ASSESSMENTS and ORDERS to the Respondent:

The Respondent is assessed a CIVIL PENALTY of SIX THOUSAND DOLLARS (\$6,000.00) and must complete one of the following options:

Option A. Full Civil Penalty Payment Option:

On or before the thirty-first (31st) day after receiving this Order, the Respondent shall pay the **FULL CIVIL PENALTY** in the amount of SIX THOUSAND DOLLARS (\$6,000.00).

Option B. Twenty Percent Civil Penalty Payment Option:

- i. On or before the thirty-first (31st) day after receiving this Order, the Respondent shall pay twenty percent (20%) of the civil penalty. Twenty percent of the civil penalty is ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00).

- ii. If the Respondent **does not** pay twenty percent (20%) of the civil penalty on or before the thirty-first (31st) day after receiving this order, then the **FULL CIVIL PENALTY** in the amount of SIX THOUSAND DOLLARS (\$6,000.00) will be immediately due and owing.
- iii. The Respondent shall pay the remaining eighty percent (80%) of the civil penalty, FOUR THOUSAND EIGHT HUNDRED DOLLARS (\$4,800.00), if and only if, the Division determines that a significant operational compliance violation has occurred at the facility during a one-year period to commence on the date of receipt of this Order. In the event that the Division discovers any violation, including non-significant operational compliance violations, it reserves the right to assess additional civil penalties and to take any and all other enforcement actions that it deems necessary.

Option C. Underground Storage Tank Training Option:

- i. On or before the thirty-first (31st) day after receiving this Order, the Respondent shall return a signed Request to Attend Underground Storage Tank Training form to the address that appears on the request form, which is enclosed. The Respondent must attend Underground Storage Tank Training within **one year** after receiving this Order.
- ii. If the Respondent **does not** attend Underground Storage Tank Training within one year after receiving this Order, then the **FULL CIVIL PENALTY** in the amount of SIX THOUSAND DOLLARS (\$6,000.00) will be immediately due and owing at the end of the one-year period.
- iii. The Respondent shall pay the **FULL CIVIL PENALTY**, if and only if, the Respondent fails to successfully complete attendance at Underground Storage Tank Training, or the Division determines that a significant operational compliance violation has occurred at the facility during a one-year period to commence on the date of receipt of this Order. In the event that the Division discovers any violation, including non-significant operational compliance violations, it reserves the right to assess additional civil penalties and to take any and all other enforcement actions that it deems necessary.

NOTICE OF RIGHTS

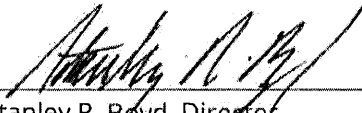
Tennessee Code Annotated ("Tenn. Code Ann.") § 68-215-119 allows the Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Commissioner within THIRTY (30) DAYS after the date the Respondent received this Order and Assessment or this Order and Assessment become final (not subject to review).

If an appeal is filed, an initial hearing of this will be conducted by an Administrative Law Judge ("ALJ") as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-211-119(b), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Rule 1360-04-01 *et seq.* (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. **Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee.** Low income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify (decrease or increase) the penalty within the statutory limits of Tenn. Code Ann. § 68-215-121 (from \$1 to \$10,000 per day per violation). Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.


Any petition for review (appeal) must be directed to the Commissioner of the Tennessee Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, TN 37243-1548. Payments of the civil penalty and/or damages shall be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, TN 37243. Technical questions and other correspondence involving compliance issues should be sent to Tonya Spence Casson, State of Tennessee, Division of Underground Storage Tanks, 1301 Riverfront Parkway, Suite 206, Chattanooga, TN 37402. Attorneys should contact the undersigned counsel of record. **The case number, UST16-0060, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Underground Storage Tanks, Tennessee Department of Environment and Conservation, on this 3rd day of July, 2017.



Stanley R. Boyd, Director
Division of Underground Storage Tanks
TN Department of Environment and Conservation

Reviewed by:



Ellery R. Richardson
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Director's Order # UST16-0060
Facility ID # 8-550103

REQUEST TO ATTEND UNDERGROUND STORAGE TANK TRAINING

In order to receive consideration for the reduction of civil penalties for the violation addressed in this Order, the Respondent has been given the opportunity to attend training on the proper operation of underground storage tanks in accordance with rules established by the State of Tennessee. To accept training, the Respondent must sign the request below and return it to the Division within thirty (30) days after receipt of the Order. You will be contacted to schedule training.

I, _____ (*Please Print Your Name*) request to attend training on the proper operation of underground storage tanks.

Signature: _____ Date: _____

My contact information is: Telephone: _____

Address: _____

Return this Request to:

Tonya Spence Casson
Chattanooga Environmental Field Office
1301 Riverfront Parkway, Suite 206
Chattanooga, TN 37402