

Storage Tank Enforcement/Trust Fund Eligibility: Tennessee Department of Environment and Conservation Proposed Order Addressing Henderson Underground Storage Tank System



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

07/25/2022

The Tennessee Department of Environment and Conservation (“TDEC”) issued a July 19th proposed Order and Assessment (“Order”) to Johnson and Clayton, Inc. (“JCI”) addressing underground storage tank trust fund eligibility and alleged violations. See Case No. FDA22-0014.

The Order provides that JCI is the registered owner of six underground storage tanks (“USTs”) in Henderson, Tennessee.

The TDEC Division of Underground Storage Tanks (“Division”) is stated to have performed an inspection at a JCI facility utilizing the six USTs on January 11, 2022.

The inspection allegedly identified the following violations:

- Failure to test spill prevention equipment at least once every three years
- Failure to inspection overfill prevention equipment at least once every three years
- Failure to ensure that cathodic protection is functioning as designed and is effectively preventing corrosion

Division personnel are stated to have also identified a highway diesel dispenser dripping into the uncontained sump. This dripping is stated to have been determined by the Division to be a suspected release.

Division personnel are stated to have sent a Modified Site Check – Dispenser Leak letter to JCI on January 20th requiring it to investigate the suspected release discovered at the site during the referenced inspection.

Division personnel are stated to have received on February 24th passing hydrostatic test results for all six spill buckets.

The Order provides that on March 10th Division personnel received an Application for Fund Eligibility from JCI for the January 11th release. Further, on March 21st Division personnel received passing overfill inspection results for all overfill devices.

The information contained in the site check, along with the test results for the UST site, are stated to indicate that a release did not occur and further investigation is not required. As a result, the project was stated to have been closed on April 8th.

The Order provides JCI has not corrected all the violations discovered at the time of inspection and the facility remains in operational noncompliance.

Division personnel are stated to have reviewed the previous Application for Trust Fund Eligibility along with the documentation required by applicable rules. It is stated to have determined that the facility did not meet the requirements for the minimum deductible for the release due to the following:

- Failure to test spill prevention equipment at least once every three years
- Failure to inspect overfill prevention equipment at least once every three years
- Failure to comply with requirements concerning design, construction, utilization and/or upgrade of corrosion protection for tanks

As a result, the Order places the deductible for the release at \$10,000. The Order also mandates that JCI undertake additional specified actions and pay a civil penalty of \$26,000.

The Order provides certain appeal rights.

A copy of the Order can be downloaded [here](#).