

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
DYER COUNTY)	
)	CASE NO. UST20-0032
RESPONDENT)	FACILITY: DYER COUNTY HIGHWAY
		DEPARTMENT

ORDER AND ASSESSMENT

NOW COMES David W. Salyers, P.E., Commissioner of the Tennessee Department of Environment and Conservation ("Commissioner"), and states:

PARTIES

I.

David W. Salyers, P.E. is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation ("Department"), and among other duties and responsibilities, he is charged with the responsibility for administering and enforcing the Tennessee Petroleum Underground Storage Tank Act ("Act"), Tenn. Code Ann. sections 68-215-101 to - 129. Stanley R. Boyd is the duly appointed Director ("Director") of the Underground Storage Tank Division ("Division"). He has received written delegation from the Commissioner to administer and enforce particular aspects of the Act.

II.

Dyer County (the "Respondent") is a municipality and the registered owner of two underground storage tank ("UST") systems located at 1920 Pioneer Road, Dyersburg, Tennessee 38024. Service of process may be made on the Respondent through the Superintendent of Roads, Jeff Jones, at 1920 Pioneer Road, Dyersburg, Tennessee 38024.

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, the Commissioner 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. § 68-215-114. If this Order becomes final, the Commissioner may red tag the facility fill ports and/or dispensers and give notice on the Department's website of petroleum delivery prohibition. Tenn. Code Ann. § 68-215-106(c). Further, the Commissioner is authorized to assess civil penalties against any person who violates or fails to comply with the Act. Tenn. Code Ann. § 68-215-121. Rules governing underground storage tanks have been promulgated pursuant to Tenn. Code Ann. section 68-215-107(f) and are effective as Tenn. Comp. R. & Regs. 0400-18-01-.01 to -.17 ("Rules").

IV.

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

FACTS

V.

On or about May 06, 1986, the Division received a Notification for Underground Storage Tanks form, signed by Grady Gentry, listing the Respondent as the owner of the two UST systems located at 1920 Pioneer Road, Dyersburg, Tennessee 38024. The facility ID number is 7-230045.

VI.

On or about November 7, 2019, Division personnel contacted Jeff Jones, the Dyer County Superintendent of Roads, and scheduled a compliance inspection to be conducted on November 26, 2019. Division personnel also sent a letter confirming the inspection date.

VII.

On or about November 26, 2019, 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, at the time of inspection, a copy of annual line tightness test results was not available for review for Tank #1A or Tank #2A.
- Violation #2: Failure to test line leak detectors annually in accordance with Rule 0400-18-01-.04(4)(a). Specifically, at the time of inspection, a copy of annual line leak detector test results was not available for review for Tank #1A or Tank #2A.

Violation #3: Failure to ensure that cathodic protection system is tested within 6 months of installation and every 3 years thereafter in accordance with Rule 0400-18-01-.02(4)(c)2(i). Specifically, at the time of inspection, a copy of current cathodic protection system test results was not available for review.

VIII.

On or about December 5, 2019, the Division received compliance documentation addressing the violations discovered at the time of inspection. A copy of passing line tightness and line leak detector tests performed on December 2, 2019, and a copy of passing cathodic protection system test results performed on December 3, 2019, were received. The documentation confirmed that Violation #1, Violation #2, and Violation #3, discovered during the inspection, had been addressed, and the facility had returned to operational compliance.

IX.

On or about January 3, 2020, Division personnel sent a Follow-up Letter and Enforcement Action Notice certified letter to the Respondent. The letter cited the violations discovered during the inspection and the response received by the Division to address the violations. U.S. Postal Service tracking records delivery on January 6, 2020.

VIOLATION

X.

By failing to operate a petroleum underground storage tank in compliance with the Act, the Respondent has violated Tenn. Code Ann. section 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;

XI.

By failing to conduct annual line tightness test or do monthly monitoring on pressurized 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 AND ASSESSMENT

XII.

Pursuant to the authority vested by Tenn. Code Ann. sections 68-215-107, -114, and -121, I, Stanley R. Boyd, acting as the authorized representative of the Commissioner, hereby issue the following Order and Assessment to the Respondent:

1. The Respondent is assessed a civil penalty of \$4,000.00 and must complete one of the following options:

Option A. Full Civil Penalty Payment Option:

On or before the 31th day after receiving this Order, the Respondent shall pay the **full civil penalty** in the amount of \$4,000.00.

Option B. Twenty Percent Civil Penalty Payment Option:

- i. On or before the 31th day after receiving this Order, the Respondent shall pay 20% of the civil penalty, \$800.00.
- ii. If the Respondent timely pays the 20% payment, then the Respondent shall pay the remaining 80% of the civil penalty, \$3,200.00, if and only if, the Division determines that an automatic enforcement violation has occurred at the facility during a one-year period to commence on the date of receipt of this Order. Payment of the remaining 80% of the civil penalty shall be due within 30 days after the automatic enforcement violation is discovered. A list of the violations that are treated as automatic enforcement violations for the purposes of this Order was enclosed with the Order.
- iii. In the event that the Division discovers any violation, including non-automatic enforcement 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 31th 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 timely submits the Request To Attend Underground Storage Tank Training, then the Respondent shall pay the **full civil penalty**, if and only if, one of the following occurs:
 - a. The Respondent fails to successfully complete attendance at Underground Storage Tank Training. If the Respondent does not successfully attend the training, then payment of the full civil penalty shall be due within 30 days after expiration of the one-year period; or
 - b. The Division determines that an automatic enforcement violation has occurred at the facility during a one-year period to commence on the date of receipt of this Order. Payment of the civil penalty shall be made within 30 days following discovery of the automatic enforcement violation. A list of the violations that are treated as automatic enforcement violations for the purposes of this Order was enclosed with the Order.
 - iii. In the event that the Division discovers any violation, including non-automatic enforcement violations, it reserves the right to assess additional civil penalties and to take any and all other enforcement actions that it deems necessary.
- 2. Failure to comply with any of the requirements of this Order could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.**

RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent(s). The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

The Respondent(s) may appeal this Order and Assessment. Tenn. Code Ann. §68-215-119. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent(s) received this Order and Assessment or this Order and Assessment will become final.

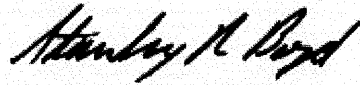
If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 69-3-110; Tenn. Code Ann. § 4-5-301 to -325 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (the Department of 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. 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) should 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, Tennessee 37243-1548. The petition may be mailed or delivered to this address, or it may be sent to TDEC.Appeals@tn.gov. 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, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks

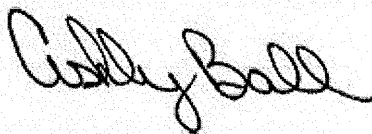
Avenue, 10th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Hannah Nodell, Nashville Environmental Field Office, 711 R.S. Gass Boulevard, Nashville, Tennessee 37216. Attorneys should contact the undersigned counsel of record. **The case number, UST20-0032, 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 11th day of June, 2020.



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

Reviewed by:



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Assistant General Counsel
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REQUEST TO ATTEND UNDERGROUND STORAGE TANK TRAINING

In order to receive consideration for the reduction of civil penalties for violations 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.

Tank school classes are offered in different regions of the state. To best accommodate you, please circle the region in which you would like to attend tank school.

West Tennessee

Middle Tennessee

East Tennessee

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:
Hannah Nodell
Nashville Environmental Field Office
711 R.S. Gass Boulevard
Nashville, Tennessee 37216