

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
KENTUCKY LAKE OIL COMPANY)	
)	CASE NO. FDA22-0015
RESPONDENT)	FACILITY: POCKET'S NO 606

ORDER AND ASSESSMENT

David W. Salyers, P.E., Commissioner of the Tennessee Department of Environment and Conservation states:

PARTIES

I.

David W. Salyers, P.E., is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation ("Department") and is charged with administering and enforcing the Tennessee Petroleum Underground Storage Tank Act ("Act"), Tenn. Code Ann. §§ 68-215-101 to -129. Stanley R. Boyd is the duly appointed Director ("Director") of the Division of Underground Storage Tanks ("Division") and has received written delegation from the Commissioner to administer and enforce the Act.

II.

Kentucky Lake Oil Company, Inc. ("Respondent") is a corporation created in Kentucky and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of four underground storage tank ("UST") systems located at 101 Highway 641 North at Old Mule Road, Camden, Tennessee 38320. Service of process may be made on the Respondent's Registered Agent, G. Robert Whitfield III at Greer, Greer & Whitfield, Attorneys, PLLC, 114 South Poplar Street, Paris, Tennessee 38242-4104.

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 affix a notice of petroleum delivery prohibition ("red tag") to 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 USTs have been promulgated pursuant to Tenn. Code Ann. § 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, Tenn. Code Ann. § 68-215-103(11), and a responsible party, Tenn. Code Ann. §§ 68-215-103(17)(A)(i) and (ii) and has violated the Act.

FACTS

V.

On December 15, 1998, the Division received a Notification for Underground Storage Tanks form listing the Respondent as the owner of four UST systems located at 101 Highway 641 North at Old Mule Road, Camden, Tennessee 38320. The facility ID number is 7-030083.

VI.

On September 29, 2021, Division personnel conducted a compliance inspection at the referenced facility. During the inspection, the following violations were discovered:

Violation #1: Failure to install, calibrate, operate, or maintain a release detection method for piping in accordance with Rule 0400-18-01-.04(1)(a)2. Specifically, at the time of inspection, it was discovered that the most recent line leak detector test for Tank #1A failed.

Violation #2: Failure to ensure that cathodic protection is functioning as designed and is effectively preventing corrosion in accordance with Rule 0400-18-01-.02(4)(c)1. Specifically, at the time of inspection, it was discovered that the impressed current rectifier was reading zero amps.

VII.

On October 21, 2021, Division personnel sent a Results of Compliance Inspection – Action Required letter to the Respondent. The letter required the Respondent to submit documentation to the Division by November 24, 2021, to document correction of the violations.

VIII.

On November 16, 2021, Division personnel received a copy of a Precision Line Tightness and Leak Detector Test Report conducted on November 4, 2021, by Aaron Kashner with Barrett Maintenance Incorporated. The report documented a passing test result for the line leak detector associated with Tank #1A and addressed violation #1.

IX.

On February 10, 2022, Division personnel received an Application for Permanent Closure of Underground Storage Tank Systems from the Respondent requesting approval to close all tanks at the facility. On February 15, 2022, Division personnel sent a Permanent Closure Application – Approved letter to the Respondent. A copy of the letter was emailed to SCS Environmental Group, LLC (SCS), the Respondent's corrective action contractor.

X.

Between March 9 and March 11, 2022, closure activities were conducted at the site and all tanks were removed. The removal of all tanks at the site confirmed violation #2 had been adequately addressed since the tanks systems would no longer require corrosion protection.

XI.

On March 23, 2022, Division personnel received an analytical testing report from SCS. The report indicated that water samples from the tank pit exceeded drinking water Initial Screening Levels for naphthalene.

XII.

On April 6, 2022, the Division received an Application for Fund Eligibility from the Respondent for the March 23, 2022, release at the facility.

XIII.

Division personnel reviewed the Application for Fund Eligibility along with the documentation required by Rule 0400-18-01-.09. Based upon this review, Division personnel determined that this facility did not meet the requirements for the minimum deductible of \$5,000.00 for the release due to the following:

- Failure to ensure that cathodic protection is functioning as designed and is effectively preventing corrosion in accordance with Rule 0400-18-01-.02(4)(c)1.

The deductible for the release is \$10,000.00.

VIOLATIONS

XIV.

By failing to operate a petroleum underground storage tank system in compliance with the Act, the Respondent 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[.]

XV.

By failing to ensure that cathodic protection is functioning as designed and is effectively preventing corrosion, the Respondent violated Rule 0400-18-01-.02(4)(c)1.

0400-18-01-.02 UST Systems: Installation and Operation.

(4) Corrosion protection.

(c) Operation and maintenance of corrosion protection.

All owners and/or operators of metal UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented until the UST system is permanently closed or undergoes a change-in-service in accordance with paragraph (4) of Rule 0400-18-01-.07:

1. All corrosion protection systems shall be operated and maintained in accordance with a corrosion expert's design to continuously provide corrosion protection to the metal components of that portion of the tank, piping and underground ancillary equipment that routinely contains petroleum and is in contact with the ground.

ORDER AND ASSESSMENT

XVI.

Pursuant to the authority vested by sections 68-215-107, -114, and -121 of the Act, the Respondent is issued the following Order:

1. The Application for Fund Eligibility for the March 23, 2022, release is approved with a deductible of \$10,000.00.
2. The Respondent shall perform release investigation and remediation activities of Rule 0400-18-01-.06.
3. On or before **three months** after receiving this Order, the Respondent shall successfully complete Underground Storage Tank operator re-training.

4. Failure to comply with any of the requirements of this Order could lead to further enforcement actions which may include civil penalties, assessment of damages, and/or recovery of costs.
5. With the exception of the deadline for filing the appeal of this Order, the Director may extend the compliance dates contained within this Order for a fixed time period for good cause shown by the Respondent. To be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay. The Director will reply to the Respondent's request in writing, establishing a new deadline for compliance with this Order. Should the Respondent fail to meet the requirements of this Order by the new deadline, then any associated civil penalty shall be due within 30 days after that deadline. The request for an extension of time does not change the deadline to submit an appeal. See Notice of Rights.

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. 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.

NOTICE OF RIGHTS

The Respondent 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 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. § 68-215-119; 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) 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, 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 Paige Ottenfeld at William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 12th Floor, Nashville, Tennessee 37243 or paige.ottenfeld@tn.gov. Attorneys should contact the undersigned counsel of record. **The case number, FDA22-0015, 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 13th day of October, 2022.



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

Reviewed by:



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