

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
BOGHANI PROPERTIES LLC)	
)	CASE NO. FDA22-0016
RESPONDENT)	FACILITY: MR GAS MARKET #7

ORDER AND ASSESSMENT

David W. Salyers, P.E., Commissioner of the Tennessee Department of Environment and Conservation (the "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 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.

Boghani Properties LLC ("Respondent") is a limited liability company created in Tennessee and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of four underground storage tank ("UST") systems located at 1301 West Highway 25-70, Newport, Tennessee 37821. Service of process may be made on the Respondent's Registered Agent, Karim Boghani, at 230 S. Roane St., Harriman, Tennessee 37748-7435.

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” as defined at Tenn. Code Ann. § 68-215-103(11) and a “responsible party” as defined at Tenn. Code Ann. §§ 68-215-103(17)(A)(i) and (ii) and has violated the Act as hereinafter stated.

FACTS

V.

On January 21, 2022, the Division received a Notification for Underground Storage Tanks form listing the Respondent as the owner of the four UST systems located at 1301 West Highway 25-70, Newport, Tennessee 37821. The notification form states the UST systems were sold on June 4, 2021. The facility ID number is 2-150052.

VI.

On February 7, 2022, Division personnel sent a Confirmation of Compliance Inspection Appointment to the Respondent. The letter scheduled the inspection for February 8, 2022. Division personnel also sent this letter to the Respondent via email.

VII.

On February 8, 2022, Division personnel conducted an operational compliance inspection at the referenced facility. During the inspection, Division personnel discovered the following violations:

- Violation #1: Failure to remove dispenser cover and visually inspect for releases, seeps, drips at least quarterly in accordance with Rule 0400-18-01-.04(1)(e). Specifically, at the time of inspection, a log of the previous 12 months of dispenser inspections was not available for review.
- Violation #2: Failure to have overfill prevention equipment in accordance with Rule 0400-18-01-.02(3)(a)1.(ii). Specifically, at the time of inspection, it was discovered that the Automatic Tank

Gauge (ATG) sensor caps associated with Tanks #7, #8, and #9 were either missing a grommet for the probe wire or a non-petroleum compatible material was used to seal the opening.

- Violation #3: Failure to install piping in accordance with manufacturer's installation instructions in accordance with Rule 0400-18-01-.02(1)(b). Specifically, at the time of inspection, the shear valve anchors beneath dispenser ½ had loose bolts.
- Violation #4: Failure to monitor spill prevention equipment at least once every three years in accordance with Rule 0400-18-01-.02(3)(c)1. Specifically, at the time of inspection, spill bucket integrity testing was not available for review.
- Violation #5: Failure to keep spill catchment basins free of water, dirt, debris, etc. in accordance with Rule 0400-18-01-.02(3)(b)3. Specifically, at the time of inspection, all spill buckets contained liquid.
- Violation #6: Failure to perform periodic walkthrough inspections in accordance with Rule 0400-18-01-.02(8)(a)1. Specifically, at the time of inspection, monthly and annual walkthrough inspection reports were not available for review.
- Violation #7: Failure to inspect spill catchment basins at least monthly and maintain a log of the monthly inspections for the last 12 months in accordance with Rule 0400-18-01-.02(3)(b)4. Specifically, at the time of inspection, monthly spill bucket inspection logs were not available for review.
- Violation #8: Failure to install, calibrate, operate, or maintain release detection method for piping in accordance with manufacturer's instructions in accordance with Rule 0400-18-01-.04(1)(a)2. Specifically, at the time of inspection, the ATG was not programmed properly. The tanks were only scheduled to perform a test on April 26, 2022.
- Violation #9: Failure to ensure that electronic and mechanical components are tested annually for proper operation in accordance with Rule 0400-18-01-.04(1)(a)3. Specifically, at the time of inspection, an ATG operability test was not available for review.
- Violation #10: Failure of facility having one or more petroleum UST systems to have one or more persons designated as Class A, Class B or Class C Operators in accordance with Rule 0400-18-01-.16(1)(a). Specifically, at the time of inspection, the facility did not have a referenced Class A or Class B Operator and did not have Class C signage posted.
- Violation #11: Failure to ensure that cathodic protection system is tested within six months of installation and every three years thereafter in accordance with Rule 0400-18-01-.02(4)(c)2.(i). Specifically, at the time of inspection, the submersible turbine pump (STP) sump associated with the regular unleaded tank appeared to contain an anode and a cathodic protection test was not available for review.

Violation #12: Failure to monitor tanks at least monthly in accordance with Rule 0400-18-01-.04(2)(a). Specifically, at the time of inspection, release detection results were not available for review.

VIII.

On February 10, 2022, Division personnel sent a Results of Compliance Inspection – Fund Reimbursement – Action Required letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by March 11, 2022.

IX.

On February 10, 2022, Division personnel received failing line tightness testing results for the diesel line. Review of this documentation resulted in the following violation:

Violation #13: Failure to repair or replace any tanks or piping which have had a structural failure in accordance with Rule 0400-18-01.02(7). Specifically, a test of the diesel line performed on this day showed failing results. Pursuant to Tenn. Code Ann. § 68-215-105(1), all petroleum USTs shall at a minimum prevent releases due to structural failure for the operational life of the tank. The failing line tightness test indicates that the diesel line is not structurally sound. Rule 0400-18-01-.02(7) requires owners and/or operators to repair or replace any tanks or piping which have had a structural failure.

X.

On March 11, 2022, Division personnel received compliance documentation addressing some of the violations discovered at the time of inspection. The following was received:

- A copy of an Annual Automatic Tank Gauge Operability Test Report conducted by Charles Barnard with Elite Petroleum on March 9, 2022.
- Pictures of acceptable ATG probes and caps.
- Pictures of ATG programming.
- Pictures documenting proper anchoring under the fuel dispensers.
- Documentation that all spill buckets had been cleaned out.
- Completed monthly walkthrough form.

This documentation addressed violations #1, 2, 3, 5, 7, 8, 9, and partially addressed violation 6.

XI.

On April 1, 2022, the Division received an Application for Fund Eligibility from the Respondent for the February 8, 2022, release at the facility.

XII.

On May 16, 2022, the Respondent properly designated a Class A and Class B Operator for the facility. This partially addressed violation #10.

XIII.

On September 26, 2022, The Division received by email:

- Passing hydrostatic testing results for all four spill buckets,
- Documentation that there was not an anode in the STP for the regular unleaded tank,
- Passing release detection results for Tank 2, 3, and 4 and invalid results for Tank 1, and,
- An annual walkthrough inspection.

The documentation verified that violations 4 and 11 had been addressed, violation 6 had been completely addressed, and violation 12 had been partially addressed.

XIV.

On September 27, 2022, Division personnel received by email:

- Passing release detection results for Tank 1A,
- A Class C operator posting

The documentation verified violations 10 and 12 had been fully addressed. These documents verified all violations discovered at the inspection had been addressed and the only outstanding issue was the indication of the structural failure of the diesel line after the failing line test.

XV.

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 for the release due to the following:

- Failure to monitor tanks at least monthly in accordance with Rule 0400-18-01-.04(2)(a).
- Failure to have overfill prevention equipment in accordance with Rule 0400-18-01-.02(3)(a)1(ii).
- Failure to monitor spill prevention equipment, for UST systems no less frequently than walkthrough inspections are conducted, or to test spill prevention equipment at least once every three (3) years in accordance with Rule 0400-18-01-.02(3)(c)1.

- Failure to conduct periodic walkthrough inspections in accordance with Rule 0400-18-01-.02(8)(a)1.
- Failure to ensure that electronic and mechanical components are tested annually for proper operation in accordance with Rule 0400-18-01-.04(1)(a)3.

The deductible for the release is \$20,000.00.

VIOLATIONS

XVI.

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[.]

XVII.

By failing to monitor tanks at least monthly, the Respondent has violated Rule 0400-18-01-.04(2)(a), 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:

- (a) Tanks.

Tanks shall be monitored at least monthly for releases using one of the methods listed in subparagraphs (3)(d) through (i) of this rule[.]

XVIII.

By failing to have overfill prevention equipment, the Respondent violated Rule 0400-18-01-.02(3)(a)1.(ii).

0400-18-01-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

- (3) Spill and overfill prevention.

- (a) Equipment.

1. Except as provided in parts 2. and 3. of this subparagraph, to prevent spilling and overfilling associated with petroleum transfer to the UST system, owners

and/or operators shall use the following spill and overfill prevention equipment:

- (ii) Overfill prevention equipment that will: [...]

XIX.

By failing to monitor spill prevention equipment for UST systems no less frequently than walkthrough inspections are conducted, or to test spill prevention equipment at least once every three years, the Respondent violated Rule 0400-18-01-.02(3)(c)1.

0400-18-01-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

- (3) Spill and overfill prevention.
 - (c) Periodic testing of spill prevention equipment and periodic inspection of overfill prevention equipment.
 - 1. Monitoring. Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) must prevent releases to the environment by meeting one of the following: [...]

XX.

By failing to perform periodic walkthrough inspections, the Respondent violated Rule 0400-18-01-.02(8)(a)1.

0400-18-01-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

- (8) Periodic operation and maintenance walkthrough inspections.
 - (a) To properly operate and maintain UST systems, no later than three years after the effective date of this rule, owners and/or operators must meet one of the following:
 - 1. Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified below: [...]

XXI.

By failing to ensure that electronic and mechanical components are tested annually for proper operation, the Respondent violated Rule 0400-18-01-.04(1)(a)3.

0400-18-01-.04 RELEASE DETECTION.

- (1) General requirements for release detection.
 - (a) Owners and/or operators of UST systems shall provide a method, or combination of methods, of release detection that:

3. Ensures that electronic and mechanical components are tested for proper operation in accordance with subparts 2.(i) through (iii) of this subparagraph. The test must be performed at least annually, and at a minimum, as applicable to the facility, cover the following components and criteria: [...]

XXII.

By failing to repair or replace any tanks or piping which have had a structural failure, the Respondent violated Rule 0400-18-01-.02(7), which states:

0400-18-01-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

(7) Repairs.

Owners and/or operators of UST systems shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store petroleum. Owners and/or operators shall repair or replace any tanks or piping which have had a structural failure.

ORDER AND ASSESSMENT

XXIII.

Pursuant to the authority vested by Tenn. Code Ann. §§ 68-215-107, -114, and -121 of the Act, the Respondent is issued the following Order:

1. The Application for Fund Eligibility for the February 8, 2022, release is approved with a deductible of \$20,000.00.
2. The Respondent shall perform release investigation and remediation activities of Rule 0400-18-01-.06 within the timeframes determined by the Division.
3. If the Respondent fails to comply with this order and/or file an appeal within the timeframes stated below, **the above-referenced facility will be placed on the Delivery Prohibition List and the fill ports and dispensers will be red tagged until compliance is achieved.** Tenn. Code Ann. § 68-215-106(c).
4. The Respondent shall perform all actions necessary to correct the outstanding violations and to bring the facility into full compliance with regulatory requirements.
 - (i) On or before the **ninetieth day** after receiving this Order, the Respondent shall successfully complete Underground Storage Tank operator re-training.
 - (ii) On or before the thirty-first day after receipt of this Order, the Respondent shall:

- a. Submit an assessment of the diesel line by the manufacturer to determine whether the line can be repaired and, if so, the best method of repair, OR,
 - b. Submit a completed permanent closure application for the diesel line.
5. On or before the thirty-first day after receipt of this Order, the Respondent shall pay a total civil penalty in the amount of \$8,000.00. This amount consists of the following:
 - i. One violation assessed at \$8,000.00 per piping for failing to repair or replace any tanks or piping which have had a structural failure.
6. 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.
7. 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(s).

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, Division of Underground Storage Tanks, William R. Snodgrass Tennessee Tower, 12th Floor 312 Rosa L. Parks Avenue, Nashville, Tennessee 37243 or paige.ottenfeld@tn.gov. Attorneys should contact the undersigned counsel of record. **The case number, FDA22-0016, 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 7th day of November, 2022.



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

Reviewed by:



[Ashley Ball \(Nov 7, 2022 11:32 CST\)](#)

Ashley J. Ball
BPR# 025250
Assistant General Counsel
Department of Environment & Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
615-532-0142
Ashley.Ball@tn.gov