

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

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF UNDERGROUND</b>
	)	<b>STORAGE TANKS</b>
<b>ZIPTRON ENERGY, INC.</b>	)	
	)	<b>CASE NO. FDA22-0019</b>
<b>RESPONDENT</b>	)	<b>FACILITY: TOBACCO OUTLET</b>

**ORDER AND ASSESSMENT**

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

Ziptron Energy, Inc. ("Respondent") is a corporation created in the State of Tennessee and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of five underground storage tank ("UST") systems located at 1483 Sparta Highway, Crossville, Tennessee 38572. Service of process may be made on the Respondent's Registered Agent, Muradali Bharwani, at 3306 Sweet Gum Lane, Grapevine, Texas 76051.

**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) has violated the Act as hereinafter stated.

#### **FACTS**

#### **V.**

On March 5, 2018, the Division received a Notification for Underground Storage Tanks form listing the Respondent as the owner of the five UST systems located at 1483 Sparta Highway, Crossville, Tennessee 38572. The facility ID number is 4-180089.

#### **VI.**

On February 28, 2022, Division personnel performed a compliance inspection at the facility. At the time of the inspection, the following violations were discovered:

- Violation #1: Failure to ensure that cathodic protection (“CP”) system is tested every 3 years in accordance with Rule 0400- 18-01-.02(4)(c)2.(i). Specifically, at the time of the inspection, no CP test was provided for review.
- Violation #2: 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 the inspection, line tightness test results were not provided for all five piping systems.
- Violation #3: Failure to install, calibrate, operate, or maintain release detection method for tank in accordance with manufacturer's instructions in accordance with Rule 0400-18-01-.04(1)(a)(2). Specifically, at the time of the inspection, all five tank systems were missing over eight months of release detection results.
- Violation #4: Failure to inspect overfill devices every three years in accordance with Rule 0400-18-01-.02(3)(c)2. Specifically, at the time of the inspection, no overfill inspections had been performed for all five overfill devices.

- Violation #5: Failure to test line leak detectors annually in accordance with guidance provided by the Division and manufacturer's instructions in accordance with Rule 0400-18-01-.04(4)(a). Specifically, at the time of the inspection, line leak detector ("LLD") test results were not provided for all five LLDs.
- Violation #6: 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 the inspection, the gauge would not move when the rectifier was turned on and off.
- Violation #7: Failure to inspect impressed current corrosion protection system every sixty (60) days in accordance with Rule 0400-18-01-.02(4)(c)4. Specifically, at the time of the inspection, rectifier inspections performed every 60 days were not provided for review.
- Violation #8: Failure to test 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 the inspection, spill bucket integrity test results for all five spill buckets were not provided for review.
- Violation #9: Failure to maintain three years of line leak detector testing in accordance with Rule 0400-18-01-.04(5)(b)(2). Specifically, at the time of the inspection, the previous three years of LLD tests were not provided for review.
- Violation #10: Failure to test electronic and mechanical components at least annually for proper operation in accordance with Rule 0400-18-01-.04(1)(a)3. Specifically, at the time of the inspection, no ATG operability test results were provided for review.

On this day, Division personnel also observed product in the regular unleaded sump. Discovery of this product is considered a suspected release that was reported onsite at discovery.

## **VII.**

On March 2, 2022, Division personnel sent a Results of Compliance Inspection letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to return to compliance by April 1, 2022.

## **VIII.**

On April 12, 2022, Division personnel received a CP test performed on March 23, 2021 and passing LLD and line tightness test results for the regular unleaded line by email. This documentation verified violation #1 had been addressed and partially addressed violations #2 and #5.

## **IX.**

On April 28, 2022, analytical reports showed groundwater samples were over drinking water initial screening levels for benzene and naphthalene. These results confirmed the suspected release that was reported on February 28, 2022.

## **X.**

On May 23, 2022 Division personnel received an Application for Fund Eligibility from the Respondent for the April 28, 2022 confirmed release at the facility.

## **XI.**

On July 1, 2022 Division personnel received:

- passing line leak detector test results from 2020 and 2021 for all five LLDs,
- another passing CP test from April 19, 2022 confirming that the rectifier was operating properly and that the CP system was providing continuous protection within the operable range,
- passing 2022 LLD test results for Tank 1A (regular unleaded) and Tank 4A (diesel) lines,
- passing 2022 line tightness test results for Tank 1A (regular unleaded) and Tank 4A (diesel) lines,
- failing spill bucket integrity test results for all five spill buckets,
- overfill inspections showing failing results for all three gas tank systems (Tank 1A, 2A, and 3A),
- ATG operability test result showing the probe for Tank 3A (premium) failed testing and needs replacement, and
- completed monthly walkthrough inspections with rectifier inspections documented for April 14, 2022 and June 8, 2022.

The documentation confirmed violations #6, 7 and 9 had been fully addressed, and violations #4, 8, and 10 had been addressed but resulted in the following violations after review of the documentation:

Violation #11: Failure to have adequate overfill in accordance with Rule 0400-18-01-.02(3)(a)1(ii). Specifically, after review of the documentation provided on July 1, 2022, three overfill devices were reported to be failing for UST systems 1A, 2A, and 3A.

Violation #12: Failure to have spill prevention equipment that will prevent release of petroleum to the environment when the transfer hose is detached from the fill pipe in accordance with Rule 0400-18-01-.02(3)(a)1(i). Specifically, after review of the documentation provided on July 1, 2022, all five spill buckets failed integrity testing.

The failing ATG probe for the premium tank will be added to violation #3 discovered at the inspection.

**XII.**

To date, the Respondent has not submitted all documentation and remains in operational non-compliance.

**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 for the release due to the following:

- Failure to install, calibrate, operate, or maintain release detection method for tank in accordance with manufacturer's instructions in accordance with Rule 0400-18-01-.04(1)(a)(2).
- Failure to install any spill prevention system in accordance with Rule 0400-18-01-.02(3)(a)1(i).
- Failure to install any overfill prevention system in accordance with Rule 0400-18-01-.02(3)(a)1(ii).

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

**VIOLATIONS**

**XIV.**

By failing to operate a 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[.]

**XV.**

By failing to ensure that cathodic protection system is tested every three years, the Respondent has violated Rule 0400-18-01-.02(4)(c)2(i), which states:

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

(4) Corrosion protection.

(c) Operation and maintenance of corrosion protection.

2. All UST systems equipped with cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(i) Frequency. All cathodic protection systems shall be tested within six (6) months of installation and at least every three (3) years thereafter[.]

**XVI.**

By failing to conduct annual line tightness test 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.

(b) Piping.

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.

**XVII.**

By failing to install, calibrate, operate, or maintain release detection method for tank in accordance with manufacturer's instructions, the Respondent has violated rule 0400-18-01-.04(1)(a)2 which states:

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:

2. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition[.]

**XVIII.**

By failing to install appropriate overfill prevention systems, the Respondent has violated Rule 0400-18-01-.02(3)(a)1(ii), which states:

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

(3) Spill and overfill prevention.

(a) Equipment.

1. Except as provided in part 2 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:

- (I) Automatically shut off flow into the tank when the tank is no more than ninety-five percent (95%) full;
- (II) Alert the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank or triggering a high-level alarm; or
- (III) Restrict flow thirty (30) minutes prior to overfilling, alert the operator with a high-level alarm one (1) minute before overfilling, or automatically shut off flow into the tanks so that none of the fittings located on top of the tank are exposed to product due to overfilling.

#### **XIX.**

By failing to test line leak detectors annually, the Respondent has violated Rule 0400-18-01.04(4)(a), which states:

0400-18-01-.04 RELEASE DETECTION.

- (4) Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of paragraph (2) of this rule shall be conducted in accordance with the following:

- (a) Automatic line leak detectors.

Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of petroleum through piping or triggering an audible or visual alarm may be used only if they detect leaks of three (3) gallons per hour at ten (10) pounds per square inch line pressure within one (1) hour. An annual test of the operation of the leak detector shall be conducted in accordance with guidance provided by the division.

#### **XX.**

By failing to operate and maintain corrosion protection system to provide continuous protection, the Respondent has 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 metal components of that portion of the tank, piping and underground ancillary equipment that routinely contains petroleum and is in contact with the ground.

## **XXI.**

By failing to install any spill prevention system, the Respondent has violated Rule 0400-18-01-.02(3)(a)1(i).

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

(3) Spill and overfill prevention.

(a) Equipment.

1. Except as provided in part 2 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:

- (i) Spill prevention equipment that will prevent release of petroleum to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin)[.]

## **XXII.**

By failing to test electronic and mechanical components at least annually for proper operation the Respondent has violated Rule 0400-18-01-.04(1)(a)3, which states:

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.



## **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 April 28, 2022, confirmed release is approved with a deductible of \$20,000.00.
2. The Respondent shall perform the 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 violation and to bring the facility into full compliance with regulatory requirements. The Respondent shall provide the Division with documentation of the corrective action performed; the documentation shall be sufficient to establish a return to full compliance.
  - (i) On or before the thirty-first day after receipt of this Order, the Respondent shall visit the following link and register to attend Underground Storage Tank Operator Training:  
<https://www.tn.gov/content/tn/environment/program-areas/ust-underground-storage-tanks/operator-training/tank-school.html>.
  - (ii) On or before **three months** after receiving this Order, the Respondent shall successfully attend Underground Storage Tank Training.
  - (iii) On or before the thirty-first day after receipt of this Order, the Respondent shall submit line tightness test results for Tank 2A (mid-grade), 3A (premium), and 5A (kerosene).
  - (iv) On or before the thirty-first day after receipt of this Order, the Respondent shall submit the most recent month of release detection results for all five tank systems.
  - (v) On or before the thirty-first day after receipt of this Order, the Respondent shall submit documentation that the Automatic Tank Gauge ("ATG") probe associated with Tank 3A (premium) has been repaired or replaced and retested.
  - (vi) On or before the thirty-first day after receipt of this Order, the Respondent shall submit documentation that the three failing overfill devices associated with Tanks 1A, 2A, and 3A have been repaired or replaced and retested.

- (vii) On or before the thirty-first day after receipt of this Order, the Respondent shall submit line leak detector test results for Tank 2A (mid-grade), 3A (premium), and 5A (kerosene).
  - (viii) On or before the thirty-first day after receipt of this Order, the Respondent shall submit documentation that the five failing spill buckets have been replaced and retested.
4. On or before the thirty-first day after receipt of this Order, the Respondent shall pay a total civil penalty in the amount of \$58,400.00. This amount consists of the following:
- (i) One violation assessed at \$1,200.00 per CP system for a total of \$1,200.00 for failing to ensure that cathodic protection system is tested every 3 years
  - (ii) Three violations assessed at \$2,000.00 per piping system for a total of \$6,000.00 for failing to conduct annual line tightness test or do monthly monitoring on pressurized underground piping.
  - (iii) Five violations assessed at \$3,200.00 per tank system for a total of \$16,000.00 for failing to install, calibrate, operate, or maintain release detection method for tank.
  - (iv) Three violations assessed at \$2,000.00 per tank compartment for a total of \$6,000.00 for failing to have adequate overfill.
  - (v) Three violations assessed at \$2,000.00 per piping system for a total of \$6,000.00 for failing to test line leak detectors annually.
  - (vi) One violation assessed at \$2,000.00 per CP system for failing to ensure that the CP system is functioning as designed and is effectively preventing corrosion.
  - (vii) One violation assessed at \$1,200.00 for failing to inspect the impressed CP system every sixty (60) days.
  - (viii) Five violations assessed at \$2,000.00 per tank compartment for a total of \$10,000.00 for failing to have spill prevention equipment that will prevent release of petroleum to the environment when the transfer hose is detached from the fill pipe
  - (ix) Five violations assessed at \$2,000.00 per piping system for a total of \$10,000.00 for failing to test electronic and mechanical components at least annually for proper operation.
5. 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.
6. 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, TN 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, TN 37243. Technical questions and other correspondence involving compliance issues should be sent to Paige Ottenfeld, Nashville Environmental Field Office, Division of Underground Storage Tanks, 711 R. S. Gass Boulevard, Nashville, TN 37216. Attorneys should contact the undersigned counsel of record. **The case number, FDA22-0019, 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 8th day of September, 2022.



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

Reviewed by:



[George Bell \(Sep 8, 2022 11:38 CDT\)](#)

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