

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
TFORCE FREIGHT, INC.)	
)	CASE NO. FED21-0005
RESPONDENT)	FACILITY: TFORCE FREIGHT - MEMPHIS

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 he is charged with the responsibility for 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.

TForce Freight, Inc. ("Respondent") is a corporation created in the State of Virginia and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of three underground storage tank ("UST") systems located at 1803 East Brooks Road, Memphis, Tennessee 38116. Service of process may be made on the Respondent's Registered Agent, Corporation Service Company, at 2908 Poston Avenue, Nashville, Tennessee 37203-1312.

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 underground storage tanks 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. §§ 68-215-117(A)(i) and (ii) and has violated the Act as hereinafter stated.

FACTS

V.

On July 31, 2012, the Division received a Notification for Underground Storage Tanks form listing the Respondent as the owner of the three UST systems located at 1803 East Brooks Road, Memphis, Tennessee 38116. The facility ID number is 9-790477.

VI.

On or about July 31, 2020, a product line leak within in an uncontained submersible turbine pump (“STP”) sump was discovered. The release of five to ten gallons of diesel product was reported to the Tennessee Emergency Management Agency (“TEMA”) on August 1, 2020.

VII.

On October 6, 2020, Division personnel received a phone call from Denise Dixson of Arcadis U.S., Inc., the Respondent’s corrective action contractor, stating that free product was discovered in soil samples taken from soil borings on October 5 and October 6, 2020. The Division was also notified of the July 2020 discovery of product in the STP sump and of the August 1, 2020, report to TEMA. At this time, Division personnel informed the Respondent that a Hazard Notification Report (“HNR”) needed to be submitted within 72 hours. When the Respondent failed to meet this deadline, the following violation was assessed:

Violation #1: Failure to use the Hazard Notification Report Form established by the Division to report the discovery of impacted drinking water, petroleum vapors, free product, and/or other hazards within 72 hours in accordance with Rule 0400-18-01-.06(4)(a).

Additionally, the Division was not notified of the soil boring field activities beforehand resulting in the assessment of following violation:

Violation #2: Failure to notify the Division at least one working day in advance of any routine field activity in accordance with Rule 0400-18-01-.06(1)(b)1(i).

VIII.

On October 12, 2020, the Division received analytical results dated August 26, 2020, from Ms. Dixon. The results showed volatile organic compounds and semi-volatile organic compounds above initial screening levels confirming a release to the environment. This resulted in the following violation:

Violation #3: Failure to report a confirmed release within 72 hours to the Division in accordance with 0400-18-01-.06(3)(a).

IX.

On March 30 and March 31, 2021, the Respondent installed four monitoring wells as part of the ongoing release investigation. These activities were not directed by the Division nor was the Division notified beforehand which is assessed under violation #2. Free product was observed in two monitoring wells on March 30, 2021, and in a third monitoring well on April 4, 2021.

X.

On April 6, 2021, Division personnel received a phone call from Ms. Dixon stating that four monitoring wells were installed in March and 50 gallons of product was removed from the wells. The release was reported seven days after the discovery of free product on March 30, 2021, resulting in the following violation:

Violation #4: Failure to report a suspected release within 72 hours to the Division in accordance with 0400-18-01-.05(1)(a).

XI.

On April 7, 2021, Division personnel received an Application for Fund Eligibility from the Respondent for the July 31, 2020, release at the facility. Also on April 7, 2021, the Division received a HNR with a summary of the case activities from August 2020 to April 2021 and an email stating that approximately five gallons of product was removed from the borehole drillings conducted on October 4, 2020. The Application for Fund Eligibility was not submitted within 90 days of the discovery of a suspected release as required by Rule 0400-18-01-.09(4)(b)1. The HNR was not submitted with 72 hours of the March 30, 2021, discovery of free product. This is assessed under violation #1.

XII.

On April 21, 2021, Division personnel sent a release response letter to the Respondent. The letter required the Respondent to take actions to prevent any further release of the petroleum into the environment and to identify and manage any human health hazards such as fire, explosion, petroleum vapors, impacted drinking water and/or free product. Additionally, the letter required the Respondent to visually inspect any aboveground or exposed below ground releases to prevent further migration of petroleum and perform a water use survey for all drinking water supplies, including wells and springs, within a 0.1-mile radius of the site to be investigated and sampled for the presence of the release. The letter also required submittal of the following reports to the Division by the following dates:

- Hazard Notification Report submitted within 72 hours of the discovery of any human health hazard(s) in the vicinity of the petroleum site;
- Release Detection and Release Prevention Records submitted by May 20, 2021;
- An Initial Response and Hazard Management Report submitted by June 21, 2021; and
- Initial Site Characterization Report containing Exposure Assessment and Risk Assessment Report submitted by August 18, 2021.

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 reimbursement for the release due to the following:

- Failure to report a suspected release to the Division within 72 hours.
- Failure to submit the application for fund eligibility within 90 days of the suspected release.

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(1), 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 submit a Hazard Notification Report form to the Division within 72 hours after the discovery of impacted drinking water, petroleum vapors, free product, and/or other hazards, the Respondent has violated Rule 0400-18-01-.06(4)(a), which states:

0400-18-01-.06 PETROLEUM RELEASE RESPONSE, REMEDIATION, AND RISK MANAGEMENT.

(4) Hazard Management.

(a) Notification.

Report the discovery of impacted drinking water, petroleum vapors, free product, and/or other hazards to the Division within 72 hours using a Hazard Notification Report form established by the Division. The form shall be completed in accordance with guidance provided by the Division. The form may be submitted by facsimile machine or electronic mail.

XVI.

By failing to notify the Division at least one working day in advance of any routine field activity, the Respondent has violated Rule 0400-18-01-.06(1)(b)(i), which states:

0400-18-01-.06 PETROLEUM RELEASE RESPONSE, REMEDIATION, AND RISK MANAGEMENT.

(1) General requirements.

(b) Field activities and environmental data.

During the course of responding to the release, conducting remediation, and/or managing risk, owners, operators, and/or other responsible parties of petroleum UST systems shall comply with the following:

1. Notice of Field Activities.

(i) Owners, operators, and/or other responsible parties of petroleum UST systems shall notify the Division at least one working day in advance of any routine field activity. Routine field activities include, but are not limited to, placement of soil borings, construction of monitoring wells, sample collection events, field surveys, such as water use surveys or land use surveys, installation and/or start-up of treatment systems.

XVII.

By failing to report a confirmed release with 72 hours to the Division, the Respondent has violated Rule 0400-18-01-.06(3)(a), which states:

0400-18-01-.06 PETROLEUM RELEASE RESPONSE, REMEDIATION, AND RISK MANAGEMENT.

(3) Initial Response.

Upon confirmation of a release in accordance with paragraph (3) of Rule 0400-18-01-.05 or after a release from a UST system is identified in any other manner, the owner, operator,

and/or other responsible party of the petroleum UST system shall, unless directed to do otherwise by the Division, perform the following initial response actions:

- a. Report the release to the Division within 72 hours (for example, by telephone, facsimile machine or electronic mail)[.]

XVIII.

By failing to report a suspected release with 72 hours to the Division, the Respondent has violated Rule 0400-18-01-.05(1)(a), which states:

0400-18-01-.05 RELEASE REPORTING, INVESTIGATION AND CONFIRMATION

(1) Reporting of Suspected Releases.

- (a) Owners and/or operators of UST systems shall report to the division within 72 hours and follow the procedures in paragraph (3) of Rule 0400-18-01-.05 for any of the following conditions:

XIX.

By failing to submit the Application for Fund Eligibility within 90 days for the suspected release, the Respondent has violated Rule 0400-18-01-.09(4)(b)1, which states:

0400-18-01-.09 PETROLEUM UNDERGROUND STORAGE TANK FUND.

(4) Fund Ineligibility.

- (b) If there is evidence of a suspected release or a confirmed release on or after July 1, 2004, that release shall be ineligible for reimbursement from the fund if an Application for Fund Eligibility is not timely filed in accordance with the following:
 1. An Application for Fund Eligibility shall be filed with the Division within 90 days of the discovery of evidence of a suspected release that is subsequently confirmed in accordance with Rules 0400-18-01-.04 or 0400-18-01-.05. The 90 days shall start on the day the evidence of the suspected release is discovered.

ORDER AND ASSESSMENT

XX.

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

1. The Application for Fund Eligibility for the July 31, 2020, release is denied.
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. On or before the thirtieth day after receipt of this Order, the Respondent shall pay a total civil penalty of \$20,400.00. This amount consists of:
 - (a) Two violations assessed at \$200.00 per event for a total of \$400.00 for failing to use the Hazard Notification Report Form established by the Division to report the discovery of impacted drinking water, petroleum vapors, free product, and/or other hazards within 72 hours;
 - (b) Two violations assessed at \$4,400.00 per event for a total of \$8,800.00 for failing to notify the Division at least one working day in advance of any routine field activity;
 - (c) One violation assessed at \$8,000.00 per event for a total of \$8,000.00 for failing to report a confirmed release to the Division; and
 - (d) One violation assessed at \$3,200.00 per event for a total of \$3,200.00 for failing to report a suspected release to the Division.
4. 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>. The Respondent must attend Underground Storage Tank Training within **three months** after receiving this Order.
5. The Respondent is advised that the foregoing Order is not in any way to be construed as a waiver, express or implied, of any provision of the law or regulations, including but not limited to, future enforcement for violations of the Act and Regulations which are not charged as violations in this Order. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.
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 FL, 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 FL, Nashville, TN 37243. Technical questions and other correspondence involving compliance issues should be sent to Carrie Ancell, 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, FED21-0005, 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 9th day of May , 2022.



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

Reviewed by:



[George Bell \(May 9, 2022 15:24 CDT\)](#)

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