

STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:	)	DIVISION OF UNDERGROUND
	)	
HENDERSONVILLE HOSPITAL	)	STORAGE TANKS
	)	
CORPORATION	)	CASE NO. FDA23-0015
	)	
	)	FACILITY: HENDERSONVILLE
	)	
RESPONDENT	)	MEDICAL CENTER

**SETTLEMENT AGREEMENT AND ORDER**

On February 2, 2023, Order and Assessment (FDA23-0015) was issued to Hendersonville Hospital Corporation ("Respondent"). On February 17, 2023, the Respondent was served with a copy of Order and Assessment (FDA23-0015), and the Order and Assessment (FDA23-0015) was timely appealed. Pursuant to Tennessee Code Annotated (Tenn. Code Ann.) §§ 4-5-105 and 68-215-119(b), David W. Salyers, P.E. ("Commissioner") and Hendersonville Hospital Corporation (collectively "the Parties") have reached a settlement as to Order and Assessment (FDA23-0015). To implement this settlement: (1) the Commissioner has agreed and by entering into this Settlement Agreement and Order does hereby dismiss Order and Assessment (FDA23-0015); and (2) the Respondent has agreed and by entering into this Settlement Agreement and Order does hereby waive the Respondent's right to a contested case hearing before the Board and hereby withdraws the Respondent's appeal of Order and Assessment (FDA23-0015). This Settlement Agreement and Order resolves and supersedes Order and Assessment (FDA23-0015). The Parties now stipulate and agree to the following:

**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.

Hendersonville Hospital Corporation is a corporation created in Tennessee and is properly registered to conduct business in Tennessee. The Respondent is the registered property owner and tank owner of one underground storage tank ("UST") system located at 355 New Shackle Island Road, Hendersonville, Tennessee 37075. Service of process may be made on the Respondent's Registered Agent, C T Corporation System, at 300 Montvue Road, Knoxville, Tennessee 37919.

**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) have violated the Act as hereinafter stated.

**FACTS**

V.

On September 10, 2010, the Division received a Notification for Underground Storage Tanks form, signed by Paul Hickman, listing the Respondent as the owner of the UST system located at 355 New Shackle Island Road, Hendersonville, Tennessee 37075.

**VI.**

On September 14, 2022, the Division received an email from Andrew Reeves with SPATCO Energy Solutions, the service provider for the Respondent, stating that the above ground storage tank (AST) feeding the boilers on site had a supply line shut off which pushed product from the 15,000 gallon AST to the 5,000 gallon UST, overfilling the UST system by approximately 1,000 gallons. This is considered a release and must be investigated.

**VII.**

On September 19, 2022, the Division performed a release investigation inspection at the facility. At this time, Reeves reiterated what was stated in the email and Division personnel inspected the site to verify tank configuration and observe the site.

**VIII.**

On September 20, 2022, the Division received an email from Michael Rollins, the Director of Facility Management of TriStar Hendersonville Medical Center, stating that when the 15,000 gallon AST was installed in 2017, the piping was connected to the UST.

**IX.**

On September 21, 2022, the Division received another email from Rollins stating that per invoices dated January 20, 2015, February 25, 2015, and November 4, 2020, the UST on site was storing No. 2 Dyed Ultra Low Sulfur Diesel with additive.

**X.**

On September 26, 2022, Division personnel performed an inspection at the site. At the inspection, the following violations were discovered:

- Violation #1: Failure to monitor tanks at least monthly in accordance with Rule 0400-18-01-.04(2)(a). Specifically, at the time of inspection, Tank 3A had no monthly release detection records, and the results of a current annual Automatic Tank Gauge (ATG) Operability Test were not available.
- Violation #2: Failure to inspect overfill prevention equipment at least once every three years in accordance with Rule 0400-18-01-.02(3)(c)2. Specifically, at the time of inspection, the results of a current overfill inspection for Tank 3A were not provided for review.

- Violation #3: Failure to perform periodic walkthrough inspections in accordance with Rule 0400-18-01-.02(8)(a)1. Specifically, at the time of inspection, the results of periodic walkthrough inspections were not available.
- Violation #4: 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 inspection, integrity testing for the spill bucket associated with Tank 3A was not provided 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, the spill bucket for Tank 3A contained liquid.
- Violation #6: Failure of facility having one or more petroleum UST systems to have one or more persons designated as Class A and Class B Operators in accordance with Rule 0400-18-01-.16(2)(a). Specifically, at the time of inspection, there were no designated Class A and Class B Operators for the facility.

#### XI.

On September 28, 2022, the Division sent a Results of Compliance Inspection – Fund Reimbursement – Action Required certified letter to the Respondent. The letter cited the violations discovered at the time of the inspection and required the Respondent to submit documentation by October 28, 2022. USPS records show delivery of letter on October 2, 2022.

#### XII

On November 10, 2022, the Division received an Application for Fund Eligibility from the Respondent for the September 14, 2022, release at the facility.

#### XIII.

Prior to the issuance of Order and Assessment (FDA23-0015), the Respondent had not addressed the compliance violations and remained in operational non-compliance. The Respondent has since addressed the violations set forth below.

#### XIV.

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 inspect overfill prevention equipment at least once every three years in accordance with Rule 0400-18-01-.02(3)(c)2.
- Failure to perform periodic walkthrough inspections in accordance with Rule 0400-18-01-.02(8)(a)1.
- Failure to test spill prevention equipment in accordance with Rule 0400-18-01-.02(3)(c)1.

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

#### VIOLATIONS

##### XV.

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[.]

##### XVI.

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

0400-18-01-.04 RELEASE DETECTION.

(1) 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, except that:

##### XVII.

By failing to perform overfill prevention system inspections every three years, the Respondent has violated Rule 0400-18-01-.02(3)(c)2, which states:

0400-18-.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.
  - 2. Inspections. Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in subpart (a)1.(ii) of this paragraph and will activate when petroleum reaches that level. Inspections must be conducted in accordance with one of the criteria in items 1.(ii)(I) through (IV) of this subparagraph.

#### XVIII.

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

#### 0400-18-.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:
      - (i) Every 30 days (Exception: spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery):
        - (I) Spill prevention equipment - visually check for damage; remove liquid or debris; check for and remove obstructions in the fill pipe; check the fill cap to make sure it is securely on the fill pipe; and, for double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area; and
        - (II) Release detection equipment - check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and ensure records of release detection testing are reviewed and current; and

(ii) Annually:

- (II) Containment sumps - visually check for damage, leaks to the containment area, or releases to the environment; remove liquid (in contained sumps) or debris; and, for double walled sumps with interstitial monitoring, check for a leak in the interstitial area; and
- (II) Hand held release detection equipment - check devices such as tank gauge sticks or groundwater bailers for operability and serviceability;

#### XIX.

By failing to test spill prevention equipment at least once every three years, the Respondent has violated Rule 0400-18-01-.02(3)(c)1.

0400-18-.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:

(ii) The spill prevention equipment is tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

- (I) Requirements developed by the manufacturer (Note: Owners and/or operators may use this option only if the manufacturer has developed requirements);
- (II) Code of practice developed by a nationally recognized association or independent testing laboratory;
- (III) Guidance provided by the Division; or

- (IV) Requirements determined by the Division to be no less protective of human health and the environment than the options listed in items (I) through (III) of this subpart.

**XX.**

By failing to keep spill catchment basins free of water, dirt, debris, etc., the Respondent has violated Rule 0400-18-01-.02(3)(b)3, which states:

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

- (3) Spill and overfill prevention
  - (b) Operating requirements.
    - 3. Owners and/or operators shall keep spill catchment basins free of water, dirt, debris and/or other substances that could interfere with the ability of the catchment basin to prevent spills.

**XXI.**

By the facility's failure to have one or more petroleum UST systems to have one or more persons designated as Class A, Class B, and Class C operators, the Respondent has Rule 0400-18-01-.16(2)(a), which states:

0400-18-01-.16 CERTIFIED OPERATOR PROGRAM.

- (2) Operator Designation Requirements.
  - (a) Effective August 8, 2012 every facility having one or more petroleum UST systems subject to the requirements of Chapter 0400-18-01 must have one or more persons who have been designated by the tank owner as Class A, Class B, and Class C Operators.

**ORDER AND ASSESSMENT**

**XXII.**

Pursuant to the authority vested by Tenn. Code Ann. §§ 68-215-107, 68-215-114, and 68-215-121, the Director of the Division of Underground Storage Tanks orders, and the Respondent agrees, as follows:

- 1. The Application for Fund Eligibility for the September 14, 2022 release is approved with a deductible of \$20,000. In addition to paying the assessed civil penalty specified in paragraph 5 below, the



Respondent shall demonstrate that the Respondent incurred the \$20,000 deductible amount for taking corrective action before receiving any funding from the Petroleum Underground Storage Tank Fund.

2. All known underground storage tanks at the facility have been permanently closed. The Respondent performed the release investigation and remediation activities as required by Tenn. Comp. R. & Regs. 0400-18-01-.06. Additional monitoring and corrective action will not be required for this release. The Respondent shall properly abandon all monitoring wells in accordance with Section II.M. of the 2006 Environmental Assessment Guidelines and remove all booms installed in the adjacent detention ponds. A monitoring well abandonment report, listing the wells abandoned, well depth and diameter and the driller's name and license number shall be submitted to the Division by August 9, 2024. The Respondent shall timely comply with any additional related deadlines required by the Division after this submission.
3. The Respondent shall pay a total civil penalty in the amount of \$14,400. With respect to said civil penalties now assessed in this Settlement Agreement and Order, the Respondent shall pay those civil penalties as follows:
  - a. The \$14,400 in civil penalties assessed to the Respondent herein shall be forgiven and waived if the Respondent timely completes the remaining closure activities as contemplated herein. This reduction of civil penalty is based, in part, on the expenses the Respondent will incur to complete the closure of the UST systems at the Facility.
  - b. The Respondent shall pay the \$14,400 civil penalty if and only if the Respondent fails to fully comply with any provision set forth in this Settlement Agreement and Order. If the Respondent fails to comply with any provision set forth in this Settlement Agreement and Order, the full civil penalty of \$14,400 shall be immediately due and owing.

4. All payments contemplated herein must be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, Davy Crocket Tower, 500 James Robertson Pkwy, 6<sup>th</sup> Floor, Nashville, Tennessee 37243. The case number, "FDA23-0015," must be clearly shown on the check or money order to ensure that the payment is properly credited.
5. The Respondent's appeal is withdrawn. The Parties agree that this Settlement Agreement and Order is a final order, as contemplated by Tenn. Code Ann. § 68-215-106(c).
6. This Settlement Agreement and Order is an integrated contract, and all prior negotiations are merged into this document. No promise, offer, inducement, or representation not set out in this Settlement Agreement and Order forms any part of the Parties' agreement. This Settlement Agreement and Order is the product of the Parties' joint efforts, and for purposes of applying any rule of construction, the Parties shall be deemed to have participated equally in the drafting of this Settlement Agreement and Order.
7. The Parties each have had the opportunity to, and have consulted with, their respective counsel, if any, regarding this Settlement Agreement and Order, and each enters into this Agreement voluntarily and with full knowledge of its legal consequences.
8. This Settlement Agreement and Order shall be governed by and interpreted according to the laws of the State of Tennessee.
9. Each of the undersigned representatives is fully authorized by the Party he or she represents to enter into the terms and conditions of this Settlement Agreement and Order and is authorized to legally bind such Party to this Agreement.
10. Each signatory may execute this Settlement Agreement and Order in multiple counterparts, with

separate pages for each party, each of which is deemed an original, but all of which, taken together, are deemed to constitute one and the same instrument. A facsimile, telecopy, or other copy of the signature shall have the same force and effect as an original signature.

11. The effective date of this Settlement Agreement and Order shall be the date it is approved and signed by the Director of the Division of Underground Storage Tanks.

**XXIII.**

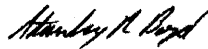
The Parties agree the foregoing Settlement Agreement and Order is a fair and reasonable resolution of this case.

**DEPARTMENT'S RESERVATION OF RIGHTS**

**XXIV.**

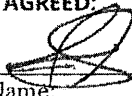
In entering this Settlement Agreement and Order, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent. The Department expressly 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).

Issued by the Director of the Division of Underground Storage Tanks and agreed to by the Respondent on this 23rd day of August, 2024.




\_\_\_\_\_  
**Stanley R. Boyd**  
**Director of the Underground Storage Tank Division**  
**Tennessee Department of Environment and Conservation**

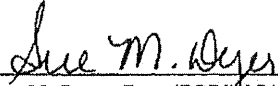
IT IS SO AGREED:

  
Print Name: Justin Coury  
Title: CEO 8/22/24  
Hendersonville Hospital Corporation Date:

Reviewed by:

  
George Bell (Aug 23, 2024 11:15 CD1) 8/23/24

**George S. Bell, III** (BPR# 19051) Date:  
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Sue M. Dyer 8/20/2024  
Date:

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