

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
SAINT THOMAS RUTHERFORD HOSPITAL)	
)	CASE NO. UST16-0033
RESPONDENT)	FACILITY: MIDDLE TENNESSEE MEDICAL
)	CENTER

ORDER AND ASSESSMENT

NOW COMES Robert J. Martineau, Jr., Commissioner of the Tennessee Department of Environment and Conservation (the "Commissioner"), and states:

PARTIES

I.

Robert J. Martineau, Jr., is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (the "Department"), and among other duties and responsibilities, he is charged with the responsibility for administering and enforcing the Tennessee Petroleum Underground Storage Tank Act (the "Act"), Tennessee Code Annotated (Tenn. Code Ann.) § 68-215-101 *et seq.*. Stanley R. Boyd is the duly appointed Director (the "Director") of the Underground Storage Tank Division (the "Division"). He has received written delegation from the Commissioner to administer and enforce particular aspects of the Act.

II.

Saint Thomas Rutherford Hospital (the "Respondent"), formerly known as Middle Tennessee Medical Center, is a corporation created in the State of Tennessee, and is properly registered to conduct business in this state. The Respondent is the registered owner of one (1) underground storage tank system located at Middle Tennessee Medical Center, 1700 Medical Center Parkway, Murfreesboro, Tennessee 37129. Service of process may be made on the Respondent's registered agent for service of process, Mr. E. Berry Holt, III, 102 Woodmont Boulevard, Suite 800, Nashville, Tennessee 37205-2221.

JURISDICTION

III.

When the Director 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, then pursuant to Tenn. Code Ann. § 68-215-114, he 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. Further, pursuant to Tenn. Code Ann. § 68-215-121, the Director has the Authority to assess civil penalties against any person who violates or fails to comply with the Act. Pursuant to Tenn. Code Ann. §§ 68-215-107 and 113, Rules of the Department governing underground storage tanks have been promulgated and are effective as the Official Compilation of the Rules and Regulations of the State of Tennessee, Chapter 0400-18-01.

IV.

The Respondent is a person as defined at Tenn. Code Ann. § 68-215-103(11), and has violated the Act as hereinafter stated.

FACTS

V.

On or about November 12, 2016, the Division received a Notification for Underground Storage Tanks form, signed by Jared Hunt, listing the Respondent as the owner of the one (1) underground storage tank (UST) system, located at Middle Tennessee Medical Center, 1700 Medical Center Parkway, Murfreesboro, Tennessee 37129. The Division assigned the facility ID # 5-750468.

VI.

On or about August 24, 2015, Division personnel contacted the Respondent's representative, Barry Cox, by phone and scheduled a compliance inspection on September 23, 2015.

VII.

On or about August 25, 2015, Division personnel sent a Confirmation of Compliance Inspection Appointment letter to the Respondent confirming a compliance inspection to be conducted at the subject facility on September 25, 2015.

VIII.

On or about September 25, 2015, Division personnel performed a compliance inspection with Barry Cox at the subject facility. The inspector discovered the following violations:

- Violation #1: Failure to provide any release detection for underground piping in accordance with Rule 0400-18-01-.04(2)(b). Specifically, an annual line leak detector function test was not available at the time of inspection.
- Violation #2: Failure to keep a log of monthly inspections of spill catchment basins for twelve (12) months in accordance with Rule 0400-18-01-.02(3)(b)4. Specifically, monthly spill bucket inspection logs were not available.
- Violation #3: Failure of tanks installed after July 25, 2007 to be monitored for a release at least every thirty (30) days in accordance with Rule 0400-18-01-.02(2)(a)5. Specifically, monthly interstitial monitoring records and the annual electronic interstitial monitoring test report for tanks were not available at the time of inspection.
- Violation #4: Failure of piping installed after July 25, 2007 to be monitored for a release at least every thirty (30) days in accordance with Rule 0400-18-01-.02(2)(b)5. Specifically, monthly interstitial monitoring records and the annual electronic interstitial monitoring test report for piping were not available at the time of inspection.

IX.

On or about September 25, 2015, Division personnel sent a Results of Compliance Inspection – Action Required certified letter to the Respondent. The letter cited the findings discovered during the inspection and required the Respondent to submit to the Division by October 26, 2015, documentation to demonstrate compliance. The letter was delivered and signed for by C. Clardy on September 30, 2015.

X.

On or about October 28, 2015, Division personnel sent a Results of Compliance Inspection – No Response Received letter to the Respondent. The letter cited the findings discovered during the inspection and required the Respondent to submit to the Division by November 26, 2015, documentation to demonstrate compliance. The letter also stated that if a representative from the referenced facility would like to request a meeting to discuss the findings or the inspection, to contact the Division within fifteen (15) days of the date of the letter. The letter was delivered and signed for by K. Holith on October 31, 2015.

XI.

On or about December 4, 2015, Division personnel sent a Compliance Corrective Action Measures Final Extension Request – Approved letter to the Respondent. The letter referenced an extension request on the same day. The letter required the Respondent to submit to the Division by December 21, 2015, documentation to demonstrate compliance.

XII.

On or about December 14, 2015, Division personnel received correspondence dated December 10, 2015 from Mr. Barry Cox with Saint Thomas Rutherford Hospital. The letter outlined how representatives from the referenced facility were going to address the findings cited in the previous letters dated September 25, 2015 and October 28, 2015.

XIII.

On or about January 8, 2016, Division personnel spoke to Mr. Barry Cox via telephone. Division personnel was informed that Petroleum Service Company of Nashville has been retained to address the violations, but that nothing had been done at that time to address the findings.

XIV.

On or about January 11, 2016, Division personnel sent a Follow-up Letter and Enforcement Action Notice letter to the Respondent. The letter cited the findings discovered during the inspection and informed the Respondent that a case manager would be in contact with them to work throughout the enforcement process. The letter was delivered on January 14, 2016.

XV.

On or about February 4, 2016, the Division received compliance documentation addressing the correctable violations discovered at the time of inspection. Received were the following: Monthly Spill Bucket Inspection Logs, Monthly Interstitial Monitoring Report, and Annual Electronic Interstitial Monitoring Test Report. These documents address all correctable violations discovered during the inspection and this response has returned the facility to operational compliance.

XVI.

On or about August 31, 2016, Division personnel sent a Notice of Violation letter to the Respondent with attention to Registered Agent, Mr. Holt E Berry III. The letter cited the findings discovered during the inspection. U.S. Postal Service tracking does not record a delivery of the letter.

XVII.

On September 7, 2016, Division personnel received an electronic copy of a letter from Mr. Charley Thompson with Petroleum Equipment Company addressing each of the violations included in the Notice of Violation letter dated August 31, 2016. Mr. Thompson detailed their plan to work with Saint Thomas Rutherford Hospital to maintain compliance. A hard copy of the referenced letter was also received on September 19, 2016.

VIOLATIONS

XVIII.

By operating a petroleum underground storage tank system without complying 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;

XIX.

By failing to monitor tanks installed after July 25, 2007 for a release at least every thirty (30) days, the Respondent has violated Rule 0400-18-01-.02(2)(a)5, which states:

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

(2) Secondary Containment.

(a) Tanks.

Tanks that are required to be secondarily contained in accordance with subparagraph (2)(c) of Rule 0400-18-01-.01, with subparagraph (1)(c) of this rule, or with paragraph (6) of this rule shall comply with the following:

5. Tanks shall be monitored for a release at least every thirty (30) days in accordance with part 2 of this subparagraph.

XX.

By failing to monitor piping installed after July 25, 2007 for a release at least every thirty (30) days, the Respondent has violated Rule 0400-18-01-.02(2)(b)5, which states:

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

(2) Secondary Containment.

(b) Piping.

Pressurized piping or suction piping that does not meet the requirements of subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-.04 that is required to be secondarily contained in accordance with subparagraph (2)(c) of Rule 0400-18-01-.01, with subparagraphs (1)(c) of this rule, or with paragraph (6) of this rule shall comply with the following:

5. Piping shall be monitored for a release at least every thirty (30) days.

ORDER AND ASSESSMENT

XXIII.

WHEREFORE, pursuant to the authority vested by Tenn. Code Ann. §§ 68-215-107, 68-215-114, and 68-215-121,

I, Stanley R. Boyd, acting as the authorized representative of the Commissioner, hereby issue the following ORDER AND ASSESSMENT to the Respondent:

The Respondent is assessed a CIVIL PENALTY of FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200.00) and must complete one of the following options:

Option A. Full Civil Penalty Payment Option:

On or before the thirty-first (31st) day after receiving this Order, the Respondent shall pay the **FULL CIVIL PENALTY** in the amount of FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200.00).

Option B. Twenty Percent Civil Penalty Payment Option:

i. On or before the thirty-first (31st) day after receiving this Order, the Respondent shall pay twenty percent (20%) of the civil penalty. Twenty percent of the civil penalty is ONE THOUSAND AND FORTY DOLLARS (\$1,040.00).

ii. If the Respondent **does not** pay twenty percent (20%) of the civil penalty on or before the thirty-first (31st) day after receiving this order, then the **FULL CIVIL PENALTY** in the

amount of FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200.00) will be immediately due and owing.

- iii. The Respondent shall pay the remaining eighty percent (80%) of the civil penalty, FOUR THOUSAND ONE HUNDRED AND SIXTY DOLLARS (\$4,160.00), if and only if, the Division determines that a significant operational compliance violation has occurred at the facility during a one-year period to commence on the date of receipt of this Order. In the event that the Division discovers any violation, including non-significant operational compliance violations, it reserves the right to assess additional civil penalties and to take any and all other enforcement actions that it deems necessary.

Option C. Underground Storage Tank Training Option:

- i. On or before the thirty-first (31st) day after receiving this Order, the Respondent shall return a signed Request to Attend Underground Storage Tank Training form to the address that appears on the request form, which is enclosed. The Respondent must attend Underground Storage Tank Training within **one year** after receiving this Order.
- ii. If the Respondent **does not** attend Underground Storage Tank Training within one year after receiving this Order, then the **FULL CIVIL PENALTY** in the amount of FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200.00) will be immediately due and owing at the end of the one-year period.
- iii. The Respondent shall pay the **FULL CIVIL PENALTY**, if and only if, the Respondent fails to successfully complete attendance at Underground Storage Tank Training, or the Division determines that a significant operational compliance violation has occurred at the facility during a one-year period to commence on the date of receipt of this Order. In the event that the Division discovers any violation, including non-significant operational compliance violations, it reserves the right to assess additional civil penalties and to take any and all other enforcement actions that it deems necessary.

NOTICE OF RIGHTS

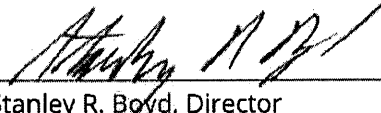
Tennessee Code Annotated ("Tenn. Code Ann.") § 68-215-119 allows the Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Commissioner within THIRTY (30) DAYS after the date the Respondent received this Order and Assessment or this Order and Assessment become final (not subject to review).

If an appeal is filed, an initial hearing of this will be conducted by an Administrative Law Judge ("ALJ") as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-211-119(b), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Rule 1360-04-01 *et seq.* (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. This includes the authority to modify (decrease or increase) the penalty within the statutory limits of Tenn. Code Ann. § 68-215-121 (from \$1 to \$10,000 per day per violation). 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. 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, Tennessee 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 Jessica O. DeHope, State of Tennessee, Division of Underground Storage Tanks, 3711 Middlebrook Pike, Knoxville, Tennessee 37921. Attorneys should contact the undersigned counsel of record. **The case number, UST16-0033, 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 15th day of MARCH, 2017.



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

Reviewed by:



George S. Bell, II
BPR# 19051
Assistant General Counsel
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Director's Order # UST16-0033
Facility ID # 5-750468

REQUEST TO ATTEND UNDERGROUND STORAGE TANK TRAINING

In order to receive consideration for the reduction of civil penalties for violations addressed in this Order, the Respondent has been given the opportunity to attend training on the proper operation of underground storage tanks in accordance with rules established by the State of Tennessee. To accept training, the Respondent must sign the request below and return it to the Division within thirty (30) days after receipt of the Order. You will be contacted to schedule training.

I, _____ (*Please Print Your Name*) request to attend training on the proper operation of underground storage tanks.

Signature: _____ Date: _____

My contact information is: Telephone: _____
Address: _____

Return this Request to:

Jessica O. DeHope
Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, Tennessee 37921