



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
Division of Underground Storage Tanks  
Davy Crockett Tower  
500 James Robertson Parkway, 7<sup>th</sup> Floor  
Nashville, Tennessee 37243

May 23, 2024

RaceTrac, Inc.  
c/o Service of Process Agent, Corporate Creations Network Inc.  
205 Powell Place  
Brentwood, TN 37027

Served via Private Process Server

Re: Raceway No. 961  
5781 Old Hickory Blvd.  
Hermitage, Tennessee 37076  
Facility ID # 5-190614  
Case # FDA24-0030

Dear Respondent:

Enclosed is a Director's Order and Assessment ("Order") for violations of the Tennessee Petroleum Underground Storage Tank Act and relevant rules. This Order is issued by the State of Tennessee, Department of Environment and Conservation, Division of Underground Storage Tanks. A civil penalty of \$2,000.00 has been assessed against Respondent RaceTrac based on the stated violation.

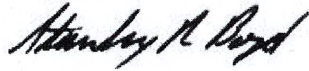
The Division reviewed the Application for Fund Eligibility for the above referenced facility and determined that this facility meets the requirements for fund eligibility for a release occurring on or after June 15, 2021. Reimbursement of the approved corrective action costs for this release is authorized. The deductible for releases which occur on or after June 15, 2021, is \$5,000.00 provided the facility meets all requirements listed in Rule 0400-18-01-.09(6). Tenn. Comp. R. & Regs. 0400-18-01-.09. Based on the information provided on the Application for Fund Eligibility and violations discovered during the most recent inspection, the deductible for the release is **\$10,000.00**

Please read the Order carefully and pay special attention to the **Notice of Rights** section. Please note that the required due dates in the Order are based on the date the Respondent receives the Order, not the date that it was signed by the Director. Any appeal must be made in writing and be received by the Division within thirty days after your receipt of the Order.

Because there is outstanding noncompliance from the December 22, 2023 inspection, if this Order is not appealed and becomes final, the facility will be placed on the petroleum **Delivery Prohibition List**. Red tags will be installed at the facility's fill ports. Documentation establishing the facility's return to compliance shall be submitted to the Division by the due date established in the Order.

If you have any questions about this matter, please contact Kate Harper at (615) 707-0469 or [kate.m.harper@tn.gov](mailto:kate.m.harper@tn.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Stanley R. Boyd". The signature is written in a cursive, slightly slanted style.

Stanley R. Boyd  
Director

cc: Enforcement File  
Nashville Environmental Field Office

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

<b>IN THE MATTER OF:</b>	)	
	)	<b>DIVISION OF UNDERGROUND</b>
	)	<b>STORAGE TANKS</b>
	)	
<b>RACETRAC, INC.,</b>	)	<b>CASE NO. FDA24-0030</b>
	)	
	)	
<b>RESPONDENT</b>	)	<b>FACILITY: RACEWAY NO. 961</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 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 -204. Stanley R. Boyd is the duly appointed Director of the Division of Underground Storage Tanks ("Division"). He has received written delegation from the Commissioner to administer and enforce the Act.

**II.**

RaceTrac, Inc. (formerly known as "RaceTrac Petroleum, Inc.") (hereinafter "Respondent") is a corporation created in Georgia and is registered to conduct business in Tennessee. The Respondent is the registered owner of three underground storage tank ("UST") systems located in Davidson County at 5781 Old Hickory Boulevard, Hermitage, Tennessee, 37076. Service of process may be made on the Respondent's Registered Agent, Corporate Creations Network Inc, at 205 Powell Place, Brentwood, Tennessee 37027.

**JURISDICTION**

**III.**

When the Commissioner finds that the Act is being violated or that effective measures are not in place to comply with the provisions of the Act, the Commissioner may issue an order for correction to the responsible party and assess civil penalties of up to \$10,000.00 for each day a violation exists. Tenn. Code

Ann. §§ 68-215-114 and -121. If this Order becomes final, the Commissioner may affix a notice of petroleum delivery prohibition (also known as a “red tag”) to the facility fill ports or dispensers or give notice on the Department’s website of petroleum delivery prohibition. Tenn. Code Ann. § 68-215-106(c). Rules governing underground storage tanks have been promulgated and are effective as Tenn. Comp. R. & Regs. 0400-18-01-.01 to -.17 (“Rules”). Tenn. Code Ann. § 68-215-107(f).

**IV.**

The Respondent is a “person,” Tenn. Code Ann. § 68-215-103(11), a “responsible party,” Tenn. Code Ann. § 68-215-103(17)(A), and has violated the Act.

**FACTS**

**V.**

On May 6, 1986, the Division received a Notification for Underground Storage Tanks form, listing the Respondent as the owner of the three UST systems located at 5781 Old Hickory Boulevard, Hermitage, Tennessee 37076 (“Facility”). The facility ID number is 5190614.

**VI.**

On December 13, 2023, Guardian Fueling Technologies was at the facility installing a new cathodic protection system and drilled an anode hole through the diesel product line. Approximately 20 to 30 gallons of diesel fuel was released, filled up the anode boring location, and subsequently flowed south approximately 25 feet and then west down a stormwater outfall. The surface migration was stopped approximately 10 feet down the stormwater outfall with oil dry and oil adsorbent pads. The diesel fuel in the anode boring location was removed, and the surface area was cleaned up.

**VII.**

On December 14, 2023, Mark Thompson with ATC Group Services, LLC, the Respondent’s corrective action contractor, emailed the Division notifying it of the release.

**VIII.**

On December 22, 2023, Division personnel performed a compliance inspection at the Facility. The inspector discovered several violations.

While the following violation has been addressed by the Respondent, it impacts the deductible as set forth in Rule 0400-18-01-.09:

- Failure to test line leak detectors annually in accordance with Rule 0400-18-01-.04(4)(a). Specifically, at the time of inspection, the results of a current Leak Detector Test Report for all three piping systems were not available.

#### **IX.**

On January 22, 2024, the Division received an Application for Fund Eligibility on behalf of the Respondent for the December 13, 2023 release at the Facility.

#### **X.**

On March 7, 2024, the Division received documentation of an Impressed Current Cathodic Protection Testing Survey dated February 26, 2024 with failing results. The following violation was added after the inspection:

- Failure to operate and maintain all corrosion protection systems in accordance with corrosion expert's design in accordance with Rule 0400-18-01-.02(4)(c)1. Respondent is required to continuously provide corrosion protection to the metal components or that portion of the tank, piping and underground ancillary equipment that routinely contains petroleum and is in contact with the ground.

#### **XI.**

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 test line leak detectors annually in accordance with Rule 0400-18-01-.04(4)(a); and
- Failure to operate and maintain corrosion protection system in accordance with a corrosion expert's design to continuously provide corrosion protection in accordance with Rule 0400-18-04-.02(4)(c)1.

The deductible for the release is \$10,000.00.

### **VIOLATIONS**

#### **XII.**

By failing to operate a UST in compliance with the Act, the Respondent violated Tennessee Code Annotated section 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[.]

### **XIII.**

The Respondent 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 gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector shall be conducted in accordance with guidance provided by the Division.

### **XIV.**

The Respondent violated Rule 0400-18-01-.02(4)(c)1, which states:

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

- (4) Corrosion protection.

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:

- (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 the metal components of that portion of the tank, piping and underground ancillary equipment that routinely contains petroleum and is in contact with the ground.

## ORDER AND ASSESSMENT

### XV.

Pursuant to the authority vested by sections 68-215-107, -114, and -121 of the Act, the Respondent is issued the following Order:

1. The Application for Fund Eligibility for the December 13, 2023 release is approved with a deductible of \$10,000.00.
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 or dispensers will be red tagged until compliance is achieved.** Tenn. Code Ann. § 68-215-106(c).
4. **Remedial Action:** The Respondent shall perform all actions necessary to correct the outstanding violation and to bring the facility into full compliance with regulatory requirements.
  - i. On or before the ninetieth day after receipt of this Order, the Respondent shall complete operator retraining by choosing one of the two following options:
    - a. Complete online training (Tennessee Tank Helper) using this link:  
<https://www.tn.gov/environment/ust/operator-training/tank-helper.html>.
      - If the Respondent does not already have an account, one shall be created and all relevant trainings for the site shall be completed.
    - b. Complete virtual training (Tennessee Tank School) by registering for the upcoming class using this link:  
<https://www.tn.gov/environment/ust/operator-training/tank-school.html>.
      - Tank school classes are held on the second Wednesday of the month. The Respondent shall register to attend the class at least one week prior to the class and complete the pre-test. A post-class test score of 70 or above is required.
  - ii. On or before the thirty-first day after receipt of this Order, the Respondent shall submit documentation of a passing corrosion protection test and documentation of necessary repairs.
5. **Civil Penalty:** On or before the thirty-first day after receipt of this Order, the Respondent shall pay a total civil penalty in the amount of \$2,000. This amount consists of the following:

i. One violation assessed at \$2,000.00 per corrosion protection system for failing to operate and maintain corrosion protection system in accordance with a corrosion expert's design to provide continuous protection in accordance with Rule 0400-18-01-.02(4)(c)1.

ii. All payments should be sent to the following address:

Treasurer, State of Tennessee  
Division of Fiscal Services – Consolidated Fees Section  
Davy Crockett Tower  
500 James Robertson Parkway, 7th Floor  
Nashville, Tennessee 37243

6. Failure to comply with any of the requirements of this Order could lead to further enforcement actions which may include additional civil penalties, assessment of damages and recovery of costs.

7. With the exception of the deadline for filing the appeal of this Order, the Department 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 Department 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 thirty 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, 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, 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 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. 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 thirty days of the date the Respondent received this Order or this Order will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Judge as a contested case hearing. Tenn. Code Ann. § 68-215-119; Tenn. Code Ann. §§ 4-5-301 to -326 (the Uniform Administrative Procedures Act); and 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 a contested case 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 Administrative Judge has the authority to affirm, modify, or deny the Order. Furthermore, the Administrative Judge 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 Administrative Judge 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, Davy Crockett Tower, 500 James Robertson Parkway, 5th Floor, Nashville, Tennessee 37243. 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, Davy Crockett Tower, 500 James Robertson Parkway, 6th Floor, Nashville, Tennessee 37243.

Technical questions and other correspondence involving compliance issues should be sent to Kate Harper, Department of Environment and Conservation, Division of Underground Storage Tanks, Davy Crockett Tower, 500 James Robertson Parkway, 7th Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. **The case number, FDA24-0030, 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 23rd day of May, 2024.



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

Reviewed by:



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George Bell (May 23, 2024 09:23 CDT)

George S. Bell, III  
BPR# 19051  
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Department of Environment and Conservation  
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