



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
Division of Underground Storage Tanks  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 12<sup>th</sup> Floor  
Nashville, Tennessee 37243

March 18, 2024

M and M Sparta Smoke LLC  
c/o Mitesh C Khokhani, Registered Agent  
1200 Sparta Street  
McMinnville, Tennessee 37110

Served via Private Process Server

Re: Pump N Pay West  
1617 New Smithville Highway  
McMinnville, Tennessee 37110  
Facility ID # 4-890077  
Case # FED24-0008

Dear Mitesh Khokhani:

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.

The Division reviewed the Application for Fund Eligibility for the above referenced facility and determined that this facility does not meet the requirements for fund eligibility for a release occurring on or after June 15, 2021. Therefore, the application is denied. In the event that the Commissioner provides for remedial activities at this site, the Respondent may be liable to the State for a penalty in an amount equal to **ONE HUNDRED FIFTY percent (150%)** of the amount of any costs incurred by the fund. Tenn. Code Ann. § 68-215-116. This penalty shall be in addition to any costs recovered from the Respondent.

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 Department within thirty days after receipt of the Order.

If this Order is not appealed and becomes final, the facility may 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 Paige Ottenfeld at 615-913-1299 or paige.ottenfeld@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  
Cookeville 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>M AND M SPARTA SMOKE LLC</b>	)	<b>CASE NO. FED24-0008</b>
	)	
	)	
<b>RESPONDENT.</b>	)	<b>FACILITY: PUMP N PAY WEST</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.**

M and M Sparta Smoke LLC is a limited liability company created in Tennessee and is registered to conduct business in Tennessee. The Respondent is the registered owner of two existing underground storage tank ("UST") systems located in Warren County at 1617 New Smithville Highway, McMinnville, Tennessee 37110. Respondent was also the registered owner of two additional UST systems at the same location that were recently removed. Service of process may be made on the Respondent's Registered Agent, Mitesh C Khokhani, at 1200 Sparta Street, McMinnville, Tennessee 37110.

**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 January 17, 2018, the Division received a Notification for Underground Storage Tanks form, listing the Respondent as the owner of the four UST systems located at 1617 New Smithville Highway, McMinnville, Tennessee 37110 (“Facility”). The facility ID number is 4-890077.

**VI.**

On October 31, 2022, the Division was contacted by Joey Wilcher with Phillips Sales and Service, the Respondent’s service provider, advising that there was a water intrusion issue for Tank 3A (diesel).

**VII.**

On November 3, 2022, Division personnel performed a compliance inspection at the Facility. Multiple violations were discovered. All violations discovered at the inspection have been addressed.

**VIII.**

On November 10, 2022, the Division received a phone call from Mr. Wilcher notifying the Division that a hole was discovered in the top of Tank 3A (diesel). This confirms structural failure of the tank system.

**IX.**

On February 24, 2023, the Division received a Permanent Closure Application (“PCA”) for Tanks 4A 3A. On February 27, 2023, the Division sent a PCA – Approved letter to the Respondent.

**X.**

On May 11, 2023, the Respondent permanently closed Tanks 3A and 4A in accordance with Division rules and guidance.

**XI.**

On May 25, 2023, the Division received analytical results showing extractable petroleum hydrocarbons (“EPH”) above initial screening levels. EPH levels are a screening tool used by the Division and indicates that contamination may be at the site.

**XII.**

On October 13, 2023, the Division received an Application for Fund Eligibility from the Respondent for the release discovered on October 31, 2022 and further verified on May 25, 2023 at the Facility.

**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 submit the application for fund eligibility within ninety days of the suspected release in accordance with Tennessee Code Annotated section 68-215-111(f)(7)(A)(i) and Rule 0400-18-01-.09(4)(b)1.

**ORDER AND ASSESSMENT**

**XIV.**

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 October 31, 2022 release is denied.
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. 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.

5. 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.
6. 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, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 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, Tennessee 37243. Technical questions and other correspondence involving

compliance issues should be sent to Paige Ottenfeld, Division of Underground Storage Tanks, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 12<sup>th</sup> Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. **The case number, FED24-0008, 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 on this   18th   day of   March   2024.



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

Reviewed by:

Catherine Anglin  
Catherine Anglin (Mar 20, 2024 15:08 EDT)

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