

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
DEPARTMENT OF ENVIRONMENT)	
AND CONSERVATION,)	CASE NUMBER UST23-0117
<i>Petitioner,</i>)	
)	
v.)	
)	
BOWLING CONVENIENCE INC.,)	FACILITY: BOWLING
)	CONVENIENCE, INC.
<i>Respondent.</i>)	

AGREED FINAL ORDER

On September 7, 2023, Order and Assessment UST23-0117 (the “Order”) was issued to Bowling Convenience Inc. (the “Respondent”). The Respondent and the Department of Environment and Conservation (“Department”) shall be collectively called the “Parties.”

On December 6, 2023, The Respondent filed a timely appeal of the Order. The Department and Respondent hereby resolve this matter pursuant to Tennessee Code Annotated sections 4-5-105 and 68-215-119(b). By entering this Agreed Final Order, the Department hereby dismisses the Order, and the Respondent hereby waives the right to a contested case hearing and withdraws the appeal of the Order. This Agreed Final Order supersedes the Order. The Parties further stipulate and agree as follows:

PARTIES

I.

David W. Salyers, P.E., is the duly appointed Commissioner of the 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 (“Director”) of the Division of Underground Storage Tanks (“Division”) and has received written delegation from the Commissioner to administer and enforce the Act.

II.

The Respondent is a corporation created in Tennessee and is registered to conduct business in Tennessee. The Respondent owns one underground storage tank ("UST") system located in Madison County at 26 Bowling Drive, Jackson, Tennessee 38305 (the "Facility"). The facility ID number is 8570511. Service of process was made on the Respondent's Registered Agent, Charles Peyton Andrews, at 36 Sandstone Circle, Suite E, Jackson, Tennessee 38305.

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 the order shall be complied with within the time limit specified in the order. Tenn. Code Ann. § 68-215-114. If an 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 and damages 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 Respondents is a person as defined at Tennessee Code Annotated section 68-215-103(11), a responsible party as defined at Tennessee Code Annotated section 68-215-117(A), and has violated the Act.

FACTS

V.

On November 13, 2019, the Division received a Notification for Underground Storage Tanks form listing the Respondent as the owner of the one UST system with a total of two compartments located in Madison County at 26 Bowling Drive, Jackson, Tennessee 38305-6101. The facility ID number is 8-570511.

VI.

On March 7, 2023, Division personnel contacted Ali Salb, contact for the facility, by phone and scheduled a compliance inspection to be conducted on March 22, 2023. On March 8, 2023, Division personnel also sent a letter confirming the inspection date.

VII.

On March 22, 2023, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

Violation #1: Failure to conduct a line tightness test in accordance with Rule 0400-18-01-.04(2)(b)1.(ii) Specifically, at the time of inspection, the electronic line leak detectors were not set up to test the 0.2 gph monthly or 0.1 gph annually.

Violation #2: Failure to install, calibrate, operate, or maintain release detection method for piping in accordance with manufacturer's instructions in accordance with Rule 0400-18-01-.04(1)(a)2. Specifically, at the time of inspection, the electronic line leak detectors were not set up to test the 0.2 gph monthly or 0.1 gph annually.

- Upon further enforcement review, it was determined this violation was cited in error and the requirements fall under Violation #1.

Violation #3: Failure to test line leak detectors annually in accordance with guidance provided by the Division and manufacturer's instructions in accordance with Rule 0400-18-01-.04(4)(a). Specifically, at the time of inspection, a line leak detector test was not available for review.

Violation #4: Failure to monitor spill prevention equipment, for UST systems no less frequently than walkthrough inspections are conducted, or 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, spill bucket integrity testing was not available for review.

Violation #5: 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, overfill prevention equipment testing was not available for review.

Violation #6: Failure to test electronic and mechanical components at least annually for proper operation in accordance with Rule 0400-18-01-.04(1)(a)3. Specifically, at the time of inspection, an annual automatic tank gauge ("ATG") operability test completed within the previous 12 months was not available for review.

Violation #7: Failure to perform an annual walkthrough inspection in accordance with Rule 0400-18-01-.02(8)(a)1. Specifically, at the time of inspection, monthly spill bucket checks, quarterly dispenser checks and walkthrough (monthly and annual) inspections were not available for review.

VIII.

On March 29, 2023, Division personnel sent a Release Investigation – System Test letter to the Respondent. The letter stated that Division personnel observed a release during the inspection and required the Respondent to conduct a system test and submit documentation to the Division by April 22, 2023.

IX.

On March 30, 2023, Division personnel sent a Results of Compliance Inspection – Action Required certified letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division and complete Operator Re-Training by May 1, 2023, to document correction of the violations. U.S. Postal Service tracking records delivery on April 1, 2023.

X.

On May 1, 2023, Division personnel sent a Follow-up Letter and Enforcement Action Notice letter to the Respondent. The letter cited the violations discovered during the inspection and the Respondent's failure to return to compliance. When the Respondent failed to meet the April 22, 2023 deadline, the following violation was added:

Violation #8 : Failure to conduct a system test when there is a suspected release to determine whether a leak exists in the tank or delivery piping, or a breach exists in either wall of secondary containment in accordance with Rule 0400-18-01-.05(3)(a).

XI.

On May 6, 2023, I the Respondent completed all operator training modules with the Division's tank helper online program. This satisfied the requirement for Operator Re-Training.

XII.

On June 9, 2023, Division personnel sent a Notice of Violation certified letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by July 9, 2023, to document correction of the violations.

XIII.

When the Respondent failed to meet the July 9, 2023, deadline, the following violation was added:

Violation #9: Failure to cooperate by failing to provide documents, testing, or monitoring records to the Division in accordance with Rule 0400-18-01-.03(2).

XIV.

Prior to the issuance of the Order, the Respondent failed to fully cooperate, remained in non-compliance, and failed to timely address the violations set forth below.

VIOLATIONS

XV.

By failing to operate a petroleum underground storage tank system 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[...]

XVI.

By failing to conduct annual line tightness test or do monthly monitoring on pressurized underground piping, the Respondent violated Rule 0400-18-01-.04(2)(b)1.(ii), which states:

0400-18-01-.04 Release Detection.

(2) Requirements for petroleum UST systems.

Owners and/or operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

(b) Piping.

Underground piping that routinely contains petroleum shall be monitored for releases in a manner that meets one of the following requirements:

1. Pressurized piping.

Underground piping that conveys petroleum under pressure shall:

- (ii) Have an annual line tightness test conducted in accordance with subparagraph (4)(b) of this rule or have monthly monitoring conducted in accordance with subparagraph (4)(c) of this rule.

XVII.

By failing to test line leak detectors annually, 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.

XVIII.

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

0400-18-01-.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: [...]

XIX.

By failing to inspect overfill prevention equipment at least once every three years, the Respondent violated Rule 0400-18-01-.02(3)(c)2., which states:

0400-18-01-.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.

XX.

By failing to test electronic and mechanical components at least annually for proper operation, the Respondent violated Rule 0400-18-01-.04(1)(a)3., which states:

0400-18-01-.04 Release Detection.

(1) General requirements for release detection.

(a) Owners and/or operators of UST systems shall provide a method, or combination of methods, of release detection that:

3. Ensures that electronic and mechanical components are tested for proper operation in accordance with subparts 2(i) through (iii) of this subparagraph. The test must be performed at least annually, and at a minimum, as applicable to the facility, cover the following components and criteria: [...]

XXI.

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

0400-18-01-.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: [...]

XXII.

By failing to conduct a system test when there is a suspected release to determine whether a leak exists in the tank or delivery piping, or a breach exists in either wall of secondary containment, the Respondent violated Rule 0400-18-01-.05(3)(a), which states:

0400-18-01-.05 Release Reporting, Investigation and Confirmation.

(3) Release Investigation and Confirmation Steps.

Unless corrective action is initiated in accordance with Rule 0400-18-01-.06, owners and/or operators shall immediately investigate and confirm all suspected releases of petroleum requiring reporting under paragraph (1) of this rule within 30 days in accordance with this paragraph.

(a) System test.

Owners and/or operators shall conduct tests (according to the requirements for tightness testing in subparagraphs (3)(b) and (4)(b) of Rule 0400-18-01-.04 or, as appropriate, secondary containment testing described in subparagraph (7)(d) of Rule 0400-18-01-.02).

XXIII.

By failing to cooperate with the Division by failing to provide documents, testing or monitoring records to the Division, the Respondent violated Rule 0400-18-01-.03(2), which states:

0400-18-01-.03 Notification, Reporting, and Record Keeping.

(2) Reporting and record keeping.

Owners, operators, and/or other responsible parties of UST systems shall cooperate fully with inspections, monitoring and testing conducted by the Division, as well as requests for document submission, testing, and monitoring by the owner, operator, and/or other responsible parties in accordance with the Tennessee Petroleum Underground Storage Tank Act T.C.A. §§ 68-215-101 et seq. [...]

XXIV.

After the Order was issued, the Respondent submitted documentation to the Division showing that the outstanding violations set forth in the Order were addressed. Accordingly, the Respondent has now addressed the violations set forth in the Order and recited above.

ORDER AND ASSESSMENT

XXV.

Pursuant to the authority vested by Tennessee Code Annotated sections 68-215-107, 68-215-114, and 68-215-121 of the Act, Director orders, and the Respondent agrees, as follows:

1. The Respondent shall not allow any Probation Violations, as listed in Exhibit A attached to this Agreed Final Order, to occur at the Facility for a period of one year from the Effective Date of this Agreed Final Order. The Division reserves its rights to reinspect the Facility as needed to ensure compliance with this provision and with the Act.

2. The Respondent is assessed a civil penalty totaling \$34,080 and \$125 in damages. The Respondent(s) shall pay as follows:

- a. Within 30 days of the Effective Date of this Agreed Final Order the Respondent shall pay \$17,165. This amount represents an assessed civil penalty of \$17,040 plus \$125 for the cost of the private process server used to serve the Order. Should the payment due date be a Saturday, Sunday, or legal State holiday, the payment shall be paid such that it is received by the Department not later than the next business day following such a day.
- b. The Respondent shall pay the remaining unpaid portion of the \$34,080 civil penalty within fifteen days of the following:
 - i. A Probation Violation occurs at the Facility within one year of the Effective Date of this Agreed Final Order;
 - ii. The Respondent fails to timely make the payment provided for in paragraph 2.a; or
 - iii. The Respondent fails to otherwise comply with any other provision set forth in this Agreed Final Order.

3. 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 Crockett Tower, 500 James Robertson Pkwy, 6th Floor, Nashville, Tennessee 37243. The case number, "UST23-0117," must be clearly shown on the check or money order to ensure that the payment is properly credited.

4. This Agreed Final Order is final for purposes of Tennessee Code Annotated sections 68-215-106(c); -115(b)(2); -119(a); and -121(b)(4) and (5). If the Respondent fails to comply with this Agreed Final Order, the remaining unpaid portion of the civil penalty shall be due and owing and **the Facility will be placed on the Delivery Prohibition List and the fill ports and dispensers will be red tagged until any unpaid civil penalties are paid and compliance is achieved.**

5. Each of the undersigned representatives is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreed Final Order and is authorized to legally bind such Party to this agreement.

6. The "Effective Date" of this Agreed Final Order shall be the date it is approved and signed by the Director of the Division of Underground Storage Tanks, provided that all parties have signed.

DEPARTMENT'S RESERVATION OF RIGHTS

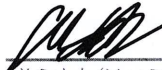
XXVI

In entering this Agreed Final 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 Respondents. 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). In entering this Agreed Final Order, the Department expressly reserves all rights it has at law and equity to pursue relief against other entities or individuals for conduct related to this enforcement case

Issued by the Director of the Division of Underground Storage Tanks and agreed to by Bowling Convenience Inc. on this 4th day of April, 2025.



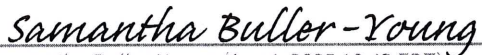
Stanley R. Boyd, Director
Division of Underground Storage Tanks
Department of Environment and Conservation



Ali Saleh (Mar 21, 2025 19:35 CDT)

Ali Saleh, President
Bowling Convenience Inc.

Reviewed by:



Samantha Buller-Young (Apr 4, 2025 10:42 EDT)

Samantha Buller-Young (BPR # 040466)
Assistant Counsel
Department of Environment and Conservation
Office of General Counsel
Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, Tennessee 37921
(865) 440-8303
Samantha.Buller-Young@tn.gov



Vincent K. Seiler (Apr 3, 2025 19:55 CDT)

Vincent K. Seiler (BPR # 019865)
Seiler & Houston, PLLC
125B Stonebridge Boulevard (38305)
Post Office Box 10455
Jackson, Tennessee 38308
(731) 300-3656; facsimile (731) 300-3657
vks@seiler-houston.com

EXHIBIT A – PROBATION VIOLATIONS

Probation Violations		
Violation	State Cite	Rule Section
Failure of tanks installed on or after July 24, 2007 to be secondarily contained.	0400-18-01-.02(2)(a)1	UST Systems: Installation & Operation (Secondary Containment)
Failure to provide interstitial monitoring on tanks installed on or after July 24, 2007.	0400-18-01-.02(2)(a)5	UST Systems: Installation & Operation (Secondary Containment)
Failure of piping installed on or after July 24, 2007 to be secondarily contained.	0400-18-01-.02(2)(b)1	UST Systems: Installation & Operation (Secondary Containment)
Failure of piping installed on or after July 24, 2007 to be monitored for a release at least every thirty (30) days.	0400-18-01-.02(2)(b)5	UST Systems: Installation & Operation (Secondary Containment)
Failure to install any spill prevention system.	0400-18-01-.02(3)(a)1(i)	UST Systems: Installation & Operation
Failure to install any overfill prevention system.	0400-18-01-.02(3)(a)1(ii)	UST Systems: Installation & Operation
Failure to provide any cathodic protection for metal tanks.	0400-18-01-.02(4)(a)	UST Systems: Installation & Operation
Failure to permanently close a lined tank where CP was not added by the December 22, 2012 deadline.	0400-18-01-.02(4)(a)3(v)	UST Systems: Installation & Operation
Failure to provide any cathodic protection for metal piping.	0400-18-01-.02(4)(b)	UST Systems: Installation & Operation
Failure to provide release detection method capable of detecting a release from tank or piping that routinely contains product.	0400-18-01-.04(1)(a)1	Release Detection (General)
Failure to install, calibrate, operate, or maintain release detection method in accordance with manufacturer's instructions.	0400-18-01-.04(1)(a)2	Release Detection (General)
Failure to provide a release detection method that meets the performance requirements for tanks or piping.	0400-18-01-.04(1)(a)3	Release Detection (General)
Failure to monitor tanks at least every 30 days, if appropriate.	0400-18-01-.04(2)(a)	Release Detection (General)
Failure to provide any release detection for underground piping.	0400-18-01-.04(2)(b)	Release Detection (Piping)
Failure to install line leak detector for pressurized underground piping.	0400-18-01-.04(2)(b)1(i)	Release Detection (Pressurized Piping)
Failure to conduct annual line tightness test or do monthly monitoring on pressurized underground piping	0400-18-01-.04(2)(b)1(ii)	Release Detection (Pressurized Piping)
Failure to comply with general remedial requirements.	0400-18-01-.06	Petroleum Release Response, Remediation, and Risk Management
Division not notified of tank closure.	0400-18-01-.07(4)(a)1-2	Out-of-Service UST Systems and Closure
Failure to conduct system closure sampling.	0400-18-01-.07(5)(a)-(b)	Out-of-Service UST Systems and Closure
Failure to register an underground storage tank in accordance with the statute.	Tenn. Code Ann. § 68-215-106(a)	Tennessee Code Annotated
Placing petroleum into an underground storage tank system(s) where the Division has attached a tag or notice to the dispensers or fill ports or that has been placed on the Delivery Prohibition list on the website.	Tenn. Code Ann. §§ 68-215-106(c) and (e) 0400-18-01-.10(6)(a)	Fee Collection
Illegal Red Tag Removal	Tenn. Code Ann. § 68-215-106(c)-(d)	Tennessee Code Annotated