

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

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF UNDERGROUND</b>
	)	<b>STORAGE TANKS</b>
<b>ZAID ALSHAIF</b>	)	
	)	<b>CASE NO. UST20-0101</b>
<b>RESPONDENT</b>	)	<b>FACILITY: 795 AIRWAYS</b>

**ORDER AND ASSESSMENT**

NOW COMES David W. Salyers, P.E., Commissioner of the Tennessee Department of Environment and Conservation ("Commissioner"), and states:

**PARTIES**

**I.**

David W Salyers, P.E., is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation ("Department"), and among other duties and responsibilities, he is charged with the responsibility for administering and enforcing the Tennessee Petroleum Underground Storage Tank Act ("Act"), Tenn. Code Ann. sections 68-215-101 to -129. Stanley R. Boyd is the duly appointed Director ("Director") of the Underground Storage Tank Division ("Division"). He has received written delegation from the Commissioner to administer and enforce aspects of the Act.

**II.**

Zaid Alshaif ("Respondent") is an individual and the registered owner of the four underground storage tank ("UST") systems located at 795 Airways Boulevard, Jackson, Tennessee 38301 ("UST Facility"). The Respondent also owns the real property. Service of process may be made on the Respondent at 799 Russell Road, 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 this order shall be complied

with within the time limit specified in the order. Tenn. Code Ann. § 68-215-114. 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.

The Commissioner may issue an order to the responsible party to close the UST system under its ownership or control or use the petroleum underground storage tank fund to permanently close the UST and seek cost recovery if the Commissioner determines that: (1) the tank system has not been brought into compliance within six (6) months of being prohibited from receiving petroleum pursuant to Tenn. Code Ann. section 68-215-106(c); or (2) all fees, penalties, and interest have not been paid on a tank at the time tank fees for the following year are payable. Tenn. Code Ann. § 68-215-114(a).

Any responsible party who fails to properly provide for removal of petroleum or remedial action upon order of the Commissioner pursuant to this chapter may be liable to the state for a penalty in an amount equal to 150% of the amount of any costs incurred by the fund as a result of such failure to take proper action. Tenn. Code Ann. § 68-215-116. The Commissioner may recover this penalty in an action commenced under Tenn. Code Ann. section 68-215-115 or in a separate civil action, and such penalty shall be in addition to any costs recovered from such responsible party pursuant to this chapter. Pursuant to Tenn. Code Ann. section 68-215-107, rules governing USTs have been promulgated and are effective as the Tenn. Comp. R. & Regs. 0400-18-01-.01 to -.17 ("Rules").

#### **IV.**

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

#### **FACTS**

#### **V.**

On or about February 24, 2017, the Division received a Buyer's Notification for Underground Storage Tanks form listing the Respondent as the owner of the four UST systems, located at 795 Airways Boulevard, Jackson, Tennessee 38301. The facility ID number is 8-570470.

#### **Unpaid Tank Fees, Late Penalties and Civil Penalty**

#### **VI.**

On or about January 1, 2019, the Division sent the Respondent an invoice for annual tank fees. Respondent was required to submit payment of tank fees to the Division by January 31, 2019.

## **VII.**

When fees were invoiced on January 1, 2019, Respondent had an unpaid balance of annual fees and late payment penalties. Respondent made one payment of \$500, which left an unpaid balance.

## **VIII.**

On or about January 1, 2020, the Division sent the Respondent an invoice for annual tank fees. At that date, Respondent still had an unpaid balance of fees and late payment penalties. In addition, as described below, Respondent also had an unpaid civil penalty, which was assessed in Order UST19-0084.

### **Delivery Prohibition**

## **IX.**

On or about May 8, 2019, the facility was placed on the delivery prohibition list maintained by the Division and red tags were attached to the fill ports of the USTs. On or about May 9, 2019, Division personnel sent a certified letter to Respondent notifying him of the delivery prohibition. United States Postal Service tracking records the letter was returned to the Division on May 14, 2019. The facility remains red-tagged.

### **Final Administrative Order**

## **X.**

On September 17, 2019, Administrative Order UST19-0084 was issued to Respondent. Respondent was served on October 9, 2019. The Order became final on November 8, 2019. The Order cited the violations discovered during a compliance inspection conducted on May 18, 2017. A civil penalty of \$4,320.00 was assessed. The Respondent has remained out of compliance with the requirement to perform tank tightness testing and to submit test results to the Division. The Respondent has not paid the civil penalty. The instant order does not supersede Order UST19-0084.

### **Inspection Performed December 20, 2019**

## **XI.**

On or about December 6, 2019, Division personnel tried unsuccessfully to reach Respondent by telephone and was unable to leave a message. On the same date Division personnel sent Respondent an email message scheduling a compliance inspection for December 20, 2019. On the same date Division personnel sent a certified letter to Respondent confirming the inspection date. United States Postal Service tracking records that the letter was returned to the Division unclaimed on December 24, 2019.

## **XII.**

On or about December 20, 2019, Division personnel performed a compliance inspection at the facility. No one was present to represent the Respondent. The following violations were cited during the inspection:

- Violation 1: Failure to report a change in status in accordance with Rule 0400-18-01-.03(1)(g). Specifically, at the time of inspection, the facility USTs were registered with the Division as Currently in Use (CIU). At the time of inspection, no UST systems were in operation. Respondent had failed to submit a notification form changing the UST system status to Temporarily out of Service (TOS).
- Violation 2: Failure to designate Class A and Class B certified operators in accordance with Rule 0400-18-01-.16(2)(a). Specifically, at the time of inspection, Division personnel concluded that operators had not been designated.<sup>1</sup>
- Violation 3: Failure to provide overfill prevention for the USTs in accordance with Rule 0400-18-01-.02(3)(a)1(ii)II. Specifically, at the time of inspection, the presence of overfill prevention equipment could not be verified.<sup>2</sup>
- Violation 4: Failure to ensure that the galvanic cathodic protection systems are tested at a minimum every three years in accordance with Rule 0400-18-01-.02(4)(c)2(i). Specifically, at the time of inspection, no cathodic protection test reports were provided for review.<sup>3</sup>

## **XIII.**

To date fees, late payment penalties and civil penalty remain unpaid. The facility remains under delivery prohibition and red-tagged. Respondent remains out of compliance with Order UST19-0084, which requires Respondent to perform tank tightness testing and submit the test results to the Division. Respondent has not submitted a notification to change the UST status from CIU to TOS.

## **VIOLATIONS**

## **XIV.**

By failing to operate petroleum underground storage tank systems in compliance with the Act, the Respondent has violated Tenn. Code Ann. § 68-215-104(2), which states:

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<sup>1</sup> Review of the Division's Tank Helper system confirmed that Respondent designated operators in 2017.

<sup>2</sup> During enforcement review it was determined that this violation was inappropriately cited given that the UST was out of operation and empty.

<sup>3</sup> During enforcement review a passing galvanic corrosion protection test report dated August 10, 2017, was located in the Division records. Based on that report, Violation 4 is withdrawn.

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.

#### **XV.**

By failing to pay fees, penalties, and interest on a tank, the Respondent has violated the following:

Tenn. Code Ann. § 68-215-104. Unlawful actions.

It is unlawful to:

(3) Refuse or fail to pay to the department fees assessed pursuant to this chapter and in violation of the rules, regulations, or orders of the commissioner or board.

and

Tenn. Code Ann. § 68-215-109. Annual fees – Failure to pay...

(c) The tank fees authorized in this section shall be paid by or on behalf of the petroleum underground storage tank owner or operator.

and

0400-18-01-.10 FEE COLLECTION.

(3) Annual petroleum underground storage tank fees.

(b) Any person who is an owner and/or operator of a petroleum underground storage tank subject to annual fees shall pay the required annual fee unless the fee is paid by another person on behalf of the tank owner and/or operator.

#### **XVI.**

By failing to submit a notification of changes in status within 30 days, Respondent has violated Rule 0400-18-01-.03(1)(g), which states:

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

(1) Notification requirements.

(g) Any change in the status of the tanks at a petroleum UST facility shall be reported within 30 days of said change. This includes but is not limited to changes of ownership, upgrading or replacement of tanks, changes in mailing address, permanent closure of a tank compartment, and changes in service. Such reports shall be made using an amended notification form. In the case of a sale of tanks, the seller shall submit the notification form designated by the Division, completed in accordance with instructions provided by the Division, and shall also inform the buyer of the notification requirement.

## ORDER AND ASSESSMENT

### XVII.

Pursuant to the authority vested by Tenn. Code Ann. sections 68-215-107, -109, -114, and -121;

I, Stanley R. Boyd, acting as the authorized representative of the Commissioner, hereby issue the following Order and Assessment to the Respondent:

1. The Respondent shall complete the following activities:
  - (a) On or before the 31<sup>st</sup> day after receipt of this Order, the Respondent shall submit a Permanent Closure Application in accordance with Rule 0400-18-01-.07(4)(a). The Respondent shall submit the original form to:  
  
Jackson Environmental Field Office  
Division of Underground Storage Tanks  
1625 Hollywood Drive  
Jackson, TN 38305  
Phone: (731) 512-1300  
FAX: (731) 661-6283  
  
and a copy of the form to:  
  
Nashville Environmental Field Office  
ATTN: Kim L. Kirk  
711 R.S. Gass Blvd  
Nashville, TN 37216
  - (b) Within 90 days of receipt of this Order, the Respondent shall permanently close the tanks and submit a Permanent Closure Report in accordance with Rules 0400-18-01-.07(4) and (5). The Respondent shall submit the original report and a copy to the addresses listed above.
  - (c) Within the timeframes stipulated in Rule 0400-18-01-.06, the Respondent shall meet any additional requirements of Rule 0400-18-01-.06 based on the results of the permanent closure activities.
2. In the event that the Respondent fails to comply with any of the items 1(a) through 1(c) above, the Commissioner may provide for any necessary remedial actions at this site, including removal of the USTs. Tenn. Code Ann. §§ 68-215-107(c) and -114(a). If the Commissioner removes the USTs, the tanks will be available at the site for the Respondent to take possession of until a designated time on the day of removal. If the Respondent does not take possession by this designated time, the Commissioner will dispose of the tanks. Any monies received from the disposal of the tanks will be credited toward any amount owed to the state that was assessed in any final administrative order issued against the Respondent.

3. Upon commencement of the actions referenced in item 2 by the Commissioner, the Respondent may be liable to the state for a penalty in an amount equal to 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 incurred by the petroleum underground storage tank fund that are recovered from the Respondent.
4. On or before the 31st day after receipt of this Order, the Respondent shall pay all outstanding annual UST fees, late penalties, and statutory interest due and owing. The Respondent may contact the Division's Fees and Notification Section at (615) 532-0952 to obtain the current amount due.
5. On or before the 31st day after receipt of this Order, the Respondent shall pay a TOTAL CIVIL PENALTY in the amount of \$2,400.00. This amount consists of the following:
  - (a) Four violations assessed at \$600 per UST system for a total of \$2,400.00 for failing to submit notification that the UST status had changed from CIU to TOS.
6. The Respondent is advised that the foregoing Order is not in any way to be construed as a waiver, express or implied, of any provision of the law or regulations, including but not limited to, future enforcement for violations of the Act and Regulations which are not charged as violations in this Order. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.
7. **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/or recovery of costs.**
8. For good cause shown by the Respondent, the Director may extend the compliance dates contained within this Order for a fixed time period. 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 Director 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 30 days after that deadline.

### **RESERVATION OF RIGHTS**

In issuing this Order and Assessment, 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).

### **NOTICE OF RIGHTS**

The Respondent may appeal this Order and Assessment. 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 30 days of the date the Respondent received this Order and Assessment or this Order and Assessment will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 69-3-110; Tenn. Code Ann. § 4-5-301 to -325 (the Uniform Administrative Procedures Act); 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 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. 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, Tennessee 37243-1548. The petition may be mailed or delivered to this address, or it may be sent to [TDEC.Appeals@tn.gov](mailto: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 Kim L. Kirk, Nashville Environmental Field Office, 711 R.S. Gass Blvd, Nashville, TN 37216 and kim.l.kirk@tn.gov. Attorneys should contact the undersigned counsel of record. Attorneys should contact the undersigned counsel of record. **The case number, UST20-0101, 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 10th day of November, 2020.



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

Reviewed by:



Ashley Ball (Nov 10, 2020 11:27 CST)

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