

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

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
)	
)	CASE NO. UST22-0035
HOTEL MEMPHIS OPCO, L.P.)	
)	DOCKET NO. 04.44-236471J
)	
RESPONDENT)	FACILITY: SHERATON MEMPHIS

SETTLEMENT AGREEMENT AND ORDER

On June 23, 2022, the Department of Environment and Conservation (“Department”) Division of Underground Storage Tanks (“Division”) issued Order and Assessment number UST22-0035 (“Order”) to Hotel Memphis Opco, L.P. (“Respondent”). A private process server completed service of the Order on June 27, 2022, and the Respondent electronically filed a timely appeal of the Order on July 27, 2022. Pursuant to Tennessee Code Annotated sections 4-5-105 and 68-215-119(b), the Division and the Respondent have reached a settlement. By executing this Settlement Agreement and Order, (1) the Division agrees to dismiss the Order and that this settlement resolves and supersedes the Order, and (2) the Respondent agrees that it waives its right to a contested case hearing before the Underground Storage Tanks and Solid Waste Disposal Control Board. The Division alleges as follows:

PARTIES

I.

David W. Salyers, P.E., is the duly appointed Commissioner of the Department of and is charged with administering and enforcing the Tennessee Petroleum Underground Storage Tank Act (“Act”), Tenn. Code Ann. §§ 68-215-101 to -129. Stanley R. Boyd is the duly appointed Director of the Division and has received written delegation from the Commissioner to administer and enforce the Act.

II.

The Respondent is a Limited Partnership created in Delaware and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of one UST system located at 250 North Main Street, Memphis, Tennessee 38103. Service of process may be made on the

Respondent's Registered Agent, C T Corporation System, at 300 Montvue Road, Knoxville, Tennessee, 37919-5546.

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 such 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 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 Tennessee Code Annotated section 68-215-107(f) and are effective as Tennessee Compilation of Rules and Regulations 0400-18-01-.01 to -.17 ("Rules").

IV.

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

FACTS

V.

On May 13, 2016, the Division received a Notification for Underground Storage Tanks form identifying Host Hotels & Resorts, L.P., as the owner of the UST system located at 250 North Main Street, Memphis, Tennessee 38103. The form identified the Sheraton Memphis as the tank owner's authorized representative. The facility ID number is 9-790339.

VI.

On August 5, 2021, Division personnel contacted Michael Tinnon, the facility's maintenance director, by phone and scheduled a compliance inspection to be conducted on August 10, 2021. On August 5, 2021, Division personnel also sent a letter confirming the inspection date.

VII.

On August 10, 2021, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

Violation #1: Failure of a facility having one or more petroleum UST systems to have one or more persons designated as Class A, Class B, and Class C Operators, in accordance with rule 0400-18-01-.16(1)(a). Specifically, during the inspection, it was discovered that there was not an A and/or B operator designated for the facility.

Violation #2: Failure to inspect impressed current corrosion protection systems every 60 days, in accordance with rule 0400-18-01-.02(4)(c)4. Specifically, during the inspection, it was discovered that the impressed current corrosion protection system was not inspected every 60 days.

Violation #3: Failure to ensure that cathodic protection system is tested within six months of installation and every three years thereafter, in accordance with rule 0400-18-01-.02(4)(c)2.(i). Specifically, during the inspection, it was discovered that the cathodic protection test has not been performed in the last 3 years.

Violation #4: Failure to conduct annual line tightness test or do monthly monitoring on pressurized underground piping, in accordance with rule 0400-18-01-.04(2)(b)1.(ii). Specifically, it was discovered during the inspection that the annual line tightness test was not performed.

Violation #5: Failure to test line leak detectors annually, in accordance with rule 0400-18-01-.04(4)(a). Specifically, during the inspection, it was discovered that the annual line leak detector test was not performed.

VIII.

On August 12, 2021, Division personnel sent a Results of Compliance Inspection – Action Required letter to Mr. Tinnon. The letter cited the violations discovered during the inspection and

required the facility to submit documentation to the Division by September 13, 2021, to document correction of the violations.

IX.

On September 16, 2021, Division personnel sent a Results of Compliance Inspection – No Response Received letter to Mr. Tinnon. The letter cited the violations discovered during the inspection and required the facility to submit documentation to the Division by October 18, 2021, to document correction of the violations.

X.

On October 29, 2021, Division personnel sent a Follow-up Letter and Enforcement Action Notice letter to Mr. Tinnon. The letter cited the violations discovered during the inspection and the facility's failure to return to compliance.

XI.

On December 2, 2021, Division personnel sent a certified Notice of Violation letter to the registered agent for Host Hotels & Resorts. The letter cited the violations discovered during the inspection and required the facility to submit documentation to the Division by January 3, 2022, to document correction of the violations. U.S. Postal Service tracking records delivery on December 8, 2021.

XII.

On December 9, 2021, Division personnel received an email from Kathleen Malloy, the litigation and compliance records manager for Host Hotels & Resort. Ms. Malloy stated that Host Hotels & Resorts had sold the subject facility to the Respondent on April 19, 2017.

XIII.

On January 24, 2022, Division personnel sent a certified Notice of Violation letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by February 24, 2022, to document correction of the violations. U.S. Postal Service tracking records delivery on January 31, 2022.

XIV.

On January 25, 2022, the Division received a Notification for Underground Storage Tanks form naming the Respondent as the owner of the tanks.

XV.

After its receipt of the Order, the Respondent completed all of the corrective action requirements listed in the Order and the Facility has since returned to operational compliance with the Act and Rules.

SETTLEMENT AGREEMENT AND ORDER

XVI.

Pursuant to sections 68-215-107, -114, and -121 of the Act, I, Stanley R. Boyd, hereby execute the following Settlement Agreement and Order:

1. In furtherance of this Settlement Agreement and Order, the Respondent has paid a civil penalty of \$1,200.00 to the Department.
2. If the Respondent incurs an Operator Retraining Violation at the Facility within one year of the execution of this Settlement Agreement and Order, the Respondent will pay \$11,040.00 to the Department at the following address:

Treasurer, State of Tennessee
Department of Environment and Conservation
Division of Fiscal Services - Consolidated Fees Section
500 James Robertson Pkwy, 6th Floor
Nashville, Tennessee 37243


DEPARTMENT'S RESERVATION OF RIGHTS

In entering this Settlement Agreement and Order, the Department does not 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 Settlement Agreement and Order will be considered as a mitigating factor in determining the need for future enforcement action.

RESPONDENT'S RESERVATION OF RIGHTS


The Respondent does not admit or deny the factual allegations or the alleged violations of law contained in this Settlement Agreement and Order or in the Order. The Respondent reserves its right to contest the factual allegations and alleged violations contained in this Settlement Agreement and order or the Order in any proceeding other than a proceeding brought by the Department to enforce the terms of this Settlement Agreement and Order.

Executed by the Director of the Division of Underground Storage Tanks, Department of Environment and Conservation, on May 13, 2024.

By: 
Title: Mac Stewart, Authorized Representative
Respondent


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

Reviewed by:


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EXHIBIT A – Violations That Require Tank School for Operator Retraining

Operator Retraining 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