

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

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF UNDERGROUND</b>
	)	<b>STORAGE TANKS</b>
<b>UNIVERSITY OF TENNESSEE</b>	)	
<b>HEALTH SCIENCE CENTER,</b>	)	<b>CASE NO. UST22-0115R</b>
	)	<b>FACILITY: UTHSC HAMILTON</b>
<b>RESPONDENT.</b>	)	<b>EYE CLINIC</b>
	)	

**ORDER AND ASSESSMENT**

David W. Salyers, P.E., Commissioner of the Department of Environment and Conservation 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 -129. 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 University of Tennessee Health Science Center (“Respondent”) is a public medical school in Memphis, Tennessee. The Respondent is the registered owner of one underground storage tank (UST) system located at 930 Madison Avenue, Memphis, Tennessee 38163. Service of process may be made on the Respondent’s authorized representative, Edwin Jeffres, 201 East Street, Memphis, Tennessee 38163.

**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. If this 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 Tenn. Code Ann. § 68-215-107(f) and are effective as Tenn. Comp. R. & Regs. 0400-18-01-.01 to -.17 (“Rules”).

**IV.**

The Respondent is a person, Tenn. Code Ann. § 68-215-103(11), and a responsible party, Tenn. Code Ann. §§ 68-215-117(A), and has violated the Act.

**FACTS**

**V.**

On January 25, 2022, the Division received a Notification for Underground Storage Tanks form listing the Respondent as the owner of the one UST system located at 930 Madison Avenue, Memphis, Tennessee 38103. The facility ID number is 0-792501.

**VI.**

On May 24, 2022, Division personnel contacted Wesley Goodnight, Senior Project Manager of Engineering for EnSafe, contractor for the facility, by phone and scheduled a compliance inspection to be conducted on May 25, 2022. Division personnel also sent a letter confirming the inspection date.

**VII.**

On May 25, 2022, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

- Violation #1: Failure to meet the requirements for UST System Release Detection in accordance with Rule 0400-18-01-.04(2)(b)1(ii). Specifically, at the time of inspection, a line tightness test conducted within the previous three years for the safe suction piping was not available for review.
- Violation #2: Failure to provide a release detection method capable of detecting a release from the tank or piping that routinely contains product in accordance with Rule 0400-18-01-.04(1)(a)1. Specifically, at the time of inspection, release detection records were not available for review.

Violation #3: Failure to meet the requirements for UST System Installation and Operation in accordance with Rule 0400-18-01-.02(3)(c)2. Specifically, at the time of inspection, an overfill prevention equipment inspection was not available for review.

Violation #4: Failure to inspect containment sumps as part of the required annual walkthrough inspection in accordance with Rule 0400-18-01-.02(8)(a)1.(ii)(I). Specifically, at the time of the inspection, a recent annual inspection was not provided for review.

### **VIII.**

On May 26, 2022, Division personnel sent a Results of Compliance Inspection – Action Required certified letter to Leslie A Gray, Mechanical Services Manager for the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by June 27, 2022, to document correction of the violations. U.S. Postal Service recorded delivery of the letter on May 31, 2022.

### **IX.**

On June 13, 2022, Division personnel received an email from Mr. Goodnight containing documentation addressing violations discovered at the time of inspection. The following documentation was received:

- A Tank Tightness Test conducted by Hassan Najdawi with ECT of Tennessee on June 8, 2022.
- A Precision Line Tightness and Leak Detector Test conducted on June 8, 2022.
- A UST Overfill Prevention Operability Test conducted on June 8, 2022.

The documentation corrected violations #1 and #3.

### **X.**

On July 19, 2022, Division personnel sent a Notice of Violation certified letter to Edwin Jeffres, Authorized Representative for the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by August 19, 2022, to document correction of the violations. U.S. Postal Service recorded delivery of the letter on July 27, 2022.

### **XI.**

When the Respondent failed to meet the August 19, 2022, deadline, the following violation was added:

Violation #5: Failure to cooperate with the Division by failing to provide documents, testing or monitoring records to the Division in accordance with Rule 0400-18-01-.03(2).

**XII.**

On January 31, 2023, Division personnel received an email from Mr. Goodnight containing documentation addressing violations discovered at the time of inspection. The following documentation was received:

- An annual walkthrough inspected form completed on September 22, 2022.

The documentation corrected violation #4.

**XIII.**

On February 1, 2023, Director's Order UST22-0115 was issued to the Respondent containing an assessment for violations of the Tennessee Petroleum Underground Storage Tank Act and relevant rules, issued by the Department. This order incorrectly cited violations #1, #3, and #4.

**XIV.**

On March 27, 2023, a Non-Suit for UST22-0115 was issued to the Respondent.

**XV.**

To date the Respondent remains in noncompliance with the Division.

**VIOLATIONS**

**XVI.**

By failing to operate a petroleum underground storage tank system in compliance with the Act, the Respondent has violated Tenn. Code Ann. 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;

**XVII.**

By failing to provide a release detection method capable of detecting a release from the tank or piping that routinely contains product, the Respondent violated Rule 0400-18-01-.04(1)(a)1, 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:

1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains petroleum.

#### **XVIII.**

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.

#### **ORDER AND ASSESSMENT**

#### **XIX.**

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

1. 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 and dispensers will be red-tagged until compliance is achieved.** Tenn. Code Ann. § 68-215-106(c).
2. The Respondent shall perform all actions necessary to correct the outstanding violation and to bring the facility into full compliance with regulatory requirements. The Respondent shall provide the Division with documentation of the corrective action performed; the documentation shall be sufficient to establish a return to full compliance.
  - i. On or before the 90th 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) anytime, using this link:  
<https://tdec.tn.gov/tankhelper>
    - I. If the Respondent does not already have an account, the Respondent must create one and complete all relevant trainings for the site.

- b. Complete virtual training (Tennessee Tank School) by registering for the upcoming class using this link:

<https://www.tn.gov/environment/program-areas/ust-underground-storage-tanks/operator-training/tank-school.html>

- i. Tank school classes are held on the second Wednesday of the month. The Respondent must 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. By January 1, 2024, the Respondent shall install and operate a valid form of release detection for Tank 1A and submit the most recent month of release detection to this office for review.

- 3. On or before the thirty-first day after receipt of this Order, the Respondents shall pay a total civil penalty in the amount of \$3,840.00. This amount consists of the following:

- I. One violation assessed at \$3,200.00 per tank compartment for a total of \$3,200.00 for failing to provide a release detection method capable of detection a release from the tank or piping that routinely contains product.
- II. One violation assessed at 20% of the civil penalty for all outstanding violations for a total of \$640.00 for failing to provide documents, testing, or monitoring records to the Division.

- 4. 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.

- 5. With the exception of the deadline for filing the appeal of this Order, the Director 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 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. 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 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.

### **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. The petition may be mailed or delivered to this address, or it may be sent to TDEC.Appeals@tn.gov.

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. § 68-215-119; 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. 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 Skylar Clemons, Nashville Environmental Field Office, 711 R.S. Gass Boulevard, Nashville, Tennessee 37216 or to Skylar.Clemons@tn.gov. Attorneys should contact the undersigned counsel of record. **The case number, UST22-0115R, 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 31st day of May, 2023.



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

Reviewed by:



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