

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

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
DEPARTMENT OF ENVIRONMENT)	
AND CONSERVATION,)	
<i>Petitioner,</i>)	CASE NUMBER UST23-0214
)	
v.)	FACILITY: CASEYS 3433
)	
CGS STORES, LLC,)	
<i>Respondent.</i>)	

SETTLEMENT AGREEMENT AND ORDER

Director’s Order No. UST23-0214 (“Order”) was issued to CGS Stores, LLC (“Respondent”) on April 25, 2024. The Respondent filed a timely appeal. Pursuant to sections 4-5-105 and 68-215-119(b) of the Tennessee Code Annotated, the Commissioner and the Respondent have reached a settlement. To implement this settlement: (1) the Commissioner has agreed and by entering into this Settlement Agreement and Order does hereby also dismiss the Order; and (2) the Respondent has agreed and by entering into this Settlement Agreement and Order does also hereby waive its right to a contested case hearing before the Board in this matter and withdraws its appeal of the Order. This Settlement Agreement and Order resolves and supersedes the Order. The Parties stipulate and agree to the following:

PARTIES

I.

David W. Salyers, P.E., is the duly appointed Commissioner of the Department of Environment and Conservation (“Department”). The Commissioner is responsible for administering the Tennessee Petroleum Underground Storage Tank Act, Tenn. Code Ann. §§ 68-

25-101 to -204 (hereinafter the “Act”). Stanley R. Boyd is the duly appointed Division Director. He has received written delegation from the Commissioner to administer and enforce the Act.

II.

The Respondent is a limited liability company created in Iowa and registered to do business in Tennessee. The Respondent is the registered owner of two underground storage tank (“UST”) systems located at 144 Highway 641 North, Benton County, Tennessee 38320. Service of process may be made on the Respondent’s Registered Agent, United Agent Group Inc. at 205 Powell Place, Brentwood, Tennessee 37027.

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 or his authorized representative has the authority to assess damages and civil penalties against any person who violates any provision of the Act, or any rule, regulation, or standard adopted pursuant to said Act. Tenn. Code Ann. § 68-215-121. Rules governing USTs have been promulgated pursuant to section 68-215-107(f) of the Act, Tenn. Comp. R. & Regs. 0400-18-01-.01 to -.17 (“Rules”).

IV.

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

FACTS

V.

On February 1, 2022, the Division received a Notification for Underground Storage Tanks form, signed by Jill Reams-Widder, listing the Respondent as the owner of the two UST systems located at 144 Highway 641 North, Camden, Tennessee 38320 (“Facility”). The facility ID number is 7-030091.

VI.

On April 21, 2023, Division personnel performed a compliance inspection at the facility. The inspector discovered several violations.

VII.

Division personnel sent a Results of Compliance Inspection – Action Required letter to the Respondent on May 1, 2023. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by May 31, 2023, to document correction of the violations.

VIII.

Between June 2 and August 29, 2023, the Division sent the Respondent multiple letters that cited the violations discovered during the inspection and the Respondent’s failure to return to compliance. These letters explained how to address each violation and extended the deadline to return to compliance multiple times. The Division received a request for deadline extension on July 7, 2023. The Division granted the extension the same day and changed the deadline date to August 2, 2023. In all, the Division set four deadlines, May 31, July 3, August 2, and September

29, 2023, for the Respondent to return to compliance and provide the Division with documents proving the facility had returned to compliance.

The Respondent violated Rule 0400-18-01-.03(2) by failing to meet the deadlines. The following violation was not addressed before the Order was issued on April 25, 2024:

- Failure to inspect overfill prevention equipment at least once every three years as in accordance with Rule 0400-18-01-.02(3)(c)2. Specifically, at the time of the inspection the overfill test was not provided for tank 2B (8,000 gallons Gasoline).

IX.

On May 15, 2024, Division personnel received overfill prevention device operability test results from Eden Pearson. The Division accepted the test. Submittal of the test brought the facility back into operational compliance.

VIOLATIONS

X.

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

XI.

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.

XII.

By failing to cooperate by failing to provide documents, testing, or monitoring records to the Division prior to the issuance of the order, 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

XIII.

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

1. The Respondent shall pay \$1,760 no later than 30 days after the effective date of this Settlement Agreement and Order. This amount represents \$80 for the private process server and \$1,680 of the \$2,400 total civil penalty assessed in the Order.
2. The Respondent shall pay the remaining assessed civil penalties of \$720 if the following occurs:
 - a. The Respondent fails to comply with paragraph 1 above, or
 - b. The Division determines there is an operator retraining violation at the facility within 12 months of the effective date of this Settlement Agreement and Order.A list of the operator retraining violations is included as Exhibit A.

All payments shall be made payable to the “Treasurer, State of Tennessee,” with the case number, UST23-0214, written in the check memo line. Such payment will be sent to:

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

The Effective Date of this Settlement Agreement and Order shall be the date it is signed by Stanley Boyd, Director of the Division of Underground Storage Tanks. The Director of the Division may, for good cause shown, extend the compliance dates contained within this Settlement Agreement and Order. 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 precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to

meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Failure to comply with any of the requirements of this Settlement Agreement and Order could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.

XIV.

The Parties agree the foregoing Settlement Agreement and Order is a fair and reasonable resolution of this case.

DEPARTMENT'S RESERVATION OF RIGHTS

XV.

In entering this Settlement Agreement and 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 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).

AUTHORITY TO SIGN

XVI.

The undersigned representatives of the Department and the Respondent hereby represent and warrant that they are fully authorized and competent to execute this Settlement Order and Agreement on behalf of the entity for which they are signing.

Agreed to by CGS Stores, LLC as evidenced by the signature below, and executed by the Director of the Division of Underground Storage Tanks, on this 18 day of June, 2024.



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



Eden Pearson (Jun 17, 2024 16:19 CDT)

Eden Pearson
Senior Legal Counsel, Government Affairs and Real Estate
CGS Stores, LLC

Reviewed by:



Catherine W. Anglin (Jun 18, 2024 16:24 EDT)

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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