

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

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<b>IN THE MATTER OF:</b>	)	
	)	<b>DIVISION OF UNDERGROUND</b>
CARROLL'S ROOFING &	)	<b>STORAGE TANKS</b>
CONSTRUCTION, LLC	)	
	)	
<i>Respondent</i>	)	<b>CASE NO. UST19-0045</b>
	)	<b>FACILITY: CARROLL'S ROOFING</b>
	)	<b>(NO. 9-791452)</b>

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**SETTLEMENT AGREEMENT AND ORDER**

On June 3, 2019, the Department issued an Order and Assessment to Carroll's Roofing & Construction, LLC ("Respondent"), and said Order and Assessment was duly served on the Respondent. The Respondent timely appealed the Order and Assessment. Pursuant to Tennessee Code Annotated ("Tenn. Code Ann.") §§ 4-5-105 and 68-215-119(b), the Tennessee Department of Environment and Conservation (the "Department") and the Respondent have reached a settlement as to the payment of the assessed CIVIL PENALTY of \$1,440.00. To resolve this matter, (1) the Department has agreed to and hereby does dismiss the June 3, 2019 Order; and (2) the Respondent has agreed and does hereby waive its right to a contested case hearing of this Settlement Agreement and Order, which will supersede the aforementioned June 3, 2019 Order. To resolve this matter, the Department and the Respondent (collectively "the Parties") now stipulate and agree as follows:

**PARTIES**

**I.**

David W Salyers, P.E., is the duly appointed Commissioner of the 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.**

Carroll's Roofing & Construction, LLC ("Respondent") is a Limited Liability Company

created in the State of Tennessee and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of three (3) underground storage tank (“UST”) systems located at 10036 Highway 70, Lakeland, Tennessee 38002-4731. Service of process may be made on the Respondent’s Registered Agent, Derrick Carroll, at the facility address.

## 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 red tag 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 as defined at Tenn. Code Ann. section 68-215-103(11), and has violated the Act as hereinafter stated.

## FACTS

### V.

On or about March 31, 2016, the Division received a Notification for Underground Storage Tanks form listing the Respondent as the owner of the three (3) UST systems located at 10036 Highway 70, Lakeland, Tennessee 38002-4731. The facility ID number is 9-791452.

### VI.

On or about July 26, 2018, Division personnel delivered a Confirmation of Compliance Inspection Appointment letter to the Respondent. The letter cited the date and time in which the inspection was to take place. The letter was signed for by the facility operator, Sonya Carroll.

## **VII.**

On or about August 14, 2018, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violation:

Violation #1: Failure to ensure that cathodic protection system is tested within 6 months of installation and every 3 years thereafter in accordance with Rule 0400-18-01.02(4)(c)2(i). Specifically, at the time of inspection, the results from a cathodic protection (“CP”) system test conducted within the previous 3 years were not available for review. The passing results from a test conducted January 17, 2015 were available.

## **VIII.**

On or about August 15, 2018, Division personnel sent a Results of Compliance Inspection – Action Required certified letter to the Respondent. The letter cited the violation discovered during the inspection and required the Respondent to submit documentation to the Division by September 17, 2018, to document correction of the violation.

## **IX.**

On or about September 26, 2018, Division personnel sent a Results of Compliance Inspection – No Response Received certified letter to the Respondent. The letter cited the violation discovered during the inspection and required the Respondent to submit documentation to the Division by October 26, 2018, to document correction of the violation. U.S. Postal Service tracking records delivery on September 28, 2018.

## **X.**

On or about November 13, 2018, Division personnel sent a Follow-up Letter and Enforcement Action Notice certified letter to the Respondent. The letter cited the violation discovered during the inspection and the Respondent’s failure to return to compliance. U.S. Postal Service tracking records delivery on November 13, 2018.

## **XI.**

On or about February 15, 2019, Division personnel contacted Mrs. Carroll to discuss the compliance at the referenced facility. Mrs. Carroll stated that a technician had been out to look at

the CP system but did not make repairs that day.

## **XII.**

On or about February 21, 2019, Division personnel sent a Notice of Violation certified letter to the Respondent. The letter cited the violation discovered during the inspection and required the Respondent to submit documentation to the Division by March 23, 2019, to document correction of the violation. U.S. Postal Service tracking records delivery on February 25, 2019.

## **XIII.**

On or about March 19, 2019, Division personnel called the facility. There was no answer and a voicemail was left requesting a return call. Division personnel also called Mrs. Carroll. There was no answer and a voicemail was left requesting a return call.

## **XIV.**

On or about March 22, 2019, Division personnel called the facility. There was no answer and a voicemail was left requesting a return call. Division personnel also called Mrs. Carroll. There was no answer and a voicemail was left requesting a return call.

## **XV.**

After the Respondent failed to meet the March 23, 2019 deadline, the following violation was added:

Violation #2: 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).

## **XVI.**

To date, no further contact has been made with the Respondent and the facility is not in compliance with the Division.

## **VIOLATIONS**

### **XVII.**

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;

### **XVIII.**

By failing to test the CP system every three years, the Respondent has violated Rule 0400-18-01-.02(4)(c)2(i), which states:

0400-18-01-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

(4) Corrosion protection.

(c) Operation and maintenance of corrosion protection.

All owners and/or operators of steel UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store petroleum:

2. All UST systems equipped with cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

### **XIX.**

By failing to cooperate with the Division, the Respondent has 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 Tenn. Code Ann. §68-215-101 et seq.

## XVII.

### SETTLEMENT TERMS AND ORDER

**WHEREFORE, PREMISES CONSIDERED**, the Director of the Division of Underground Storage Tanks orders, and the Respondent agrees, as follows:

1. The UST system at Subject Property may be inspected by the Division any time over the next twelve (12) months. During this twelve (12) month period, the Respondent, its Operators, or any other person that might operate the UST system at Subject Property on behalf of the Respondent must remain in significant operational compliance with the Tennessee Petroleum Underground Storage Tank Act.
2. The Respondent shall be responsible for paying a TOTAL CIVIL PENALTY in the amount of \$1,440.00, which represents the entire assessed civil penalty set forth in the aforementioned Order and Assessment dated June 3, 2019 as follows:
  - a. Concurrently with the execution of this Settlement Agreement and Order, the Respondent shall pay \$1,152, which represents eighty percent (80%) of the assessed civil penalty.
  - b. The Respondent agrees to have its UST operator of record attend the Tennessee Department of Environment and Conservation's "Tank School" and to provide verification of such attendance to the Department within 120 days of the issuance of this Settlement Agreement and Order.
  - c. If the Respondent or any other persons operating the UST system at the Subject Property remain in significant operational compliance over the succeeding twelve (12) months following execution of this agreement, the Division will discount the civil penalty by twenty percent (20%) and accept the aforementioned payment as full satisfaction of this Order.
  - d. If the Respondent or any other persons operating the UST system at the Subject Property fail to remain in significant operational compliance over the succeeding twelve (12) month, the Division will red tag the facility fill ports and/or dispensers and give notice on the Department's website of petroleum delivery prohibition as contemplated by Tenn. Code Ann. § 68-215-106(c). Additionally, the Respondent shall immediately pay the unpaid balance of

\$288.

3. All payments provided for herein must be made to the “Treasurer, State of Tennessee” and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10<sup>th</sup> Floor, Nashville, Tennessee 37243. The case number, “UST19-0045” must be clearly shown on the check or money order to ensure that the payment is properly credited.
4. The Parties each have had the opportunity to, and have consulted with, their respective counsel, if any, regarding this Agreement and each enters into this Agreement voluntarily and with full knowledge of its legal consequences. The undersigned representatives of the Department and the Respondent hereby represent and warrant that they are fully authorized and competent to execute this Settlement Agreement and Order on behalf of the entity for which they are signing.
5. This Agreement shall be governed by the laws of the State of Tennessee and constitutes the entire agreement among the Parties. The Parties hereby declare that the terms of this Agreement have been completely read, fully understood and voluntarily accepted for the purpose of making a full and final compromise and settlement of this enforcement matter.
6. Each signatory may execute this Agreement in multiple counterparts, with separate pages for each party, each of which is deemed an original, but all of which, taken together, are deemed to constitute one and the same instrument. A facsimile, telecopy, or .pdf signature shall have the same force and effect as an original signature.

#### **DEPARTMENT’S RESERVATION OF RIGHTS**

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).

**WAIVER OF RIGHT OF APPEAL**

The Respondent understands that it has the right to appeal this Settlement Agreement and Order pursuant to Tenn. Code Ann. § 68-215-119(b) of the Act. By signing below, the Respondent knowingly and voluntarily waives any right it may have to appeal this Settlement Agreement and Order.

**THIS SETTLEMENT AGREEMENT AND ORDER SHALL BE EFFECTIVE UPON BEING SIGNED ON BEHALF OF ALL PARTIES.**

**CARROLL'S ROOFING & CONSTRUCTION, LLC, RESPONDENT:**

[Handwritten Signature]

SIGNATURE

7/11/19

DATE

By: Derrick Carroll

Print Name

Title: Member

STATE OF TENNESSEE )  
COUNTY OF Shelby )

Before me, the undersigned authority of the State and County aforesaid, personally appeared Derrick Carroll, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be Member of **Carroll's Roofing & Construction, LLC**, and who, being so authorized, executed the foregoing instrument for the purposes therein contained, by signing the name on behalf of **Carroll's Roofing & Construction, LLC** as said authorized representative. .

Witness my hand and official seal at office in Lakeland, Tennessee, this 11<sup>th</sup> day of July, 2019.

My Commission Expires January 20, 2020  
My Commission Expires: \_\_\_\_\_

[Handwritten Signature]  
NOTARY PUBLIC





**THIS SETTLEMENT AGREEMENT AND ORDER SHALL BE EFFECTIVE UPON BEING SIGNED ON BEHALF OF ALL PARTIES.**

**TENNESSEE DEPARTMENT OF ENVIRONMENT & CONSERVATION:**

  
By: Stanley R. Boyd, Director

7-17-2019  
DATE

STATE OF TENNESSEE )  
COUNTY OF DAVIDSON )

Before me, the undersigned authority of the State and County aforesaid, personally appeared Stanley R. Boyd, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be the duly appointed Director of the Underground Storage Tank Division of the **TENNESSEE DEPARTMENT OF ENVIRONMENT & CONSERVATION**, and who, being so authorized, executed the foregoing instrument for the purposes therein contained, by signing his name on behalf of the Department as said authorized officer.

Witness my hand and seal at office this the 17<sup>th</sup> day of July, 2019.

  
NOTARY PUBLIC

My Commission Expires: 5-9-2023



Reviewed by:



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