

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
AUTHUR CHAPMAN)	
)	CASE NO. CFR 18-0001
RESPONDENT)	FACILITY: PLEASANT RUN GROCERY

ORDER AND ASSESSMENT

NOW COMES Dr. Shari Meghreblian, PhD, Commissioner of the Tennessee Department of Environment and Conservation (the "Commissioner"), and states:

PARTIES

I.

Dr. Shari Meghreblian, PhD, is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (the "Department"), and among other duties and responsibilities, she is charged with the responsibility for administering and enforcing the **Tennessee Petroleum Underground Storage Tank Act** (the "Act") (Tenn. Code Ann. § 68-215-101 *et seq.*). Stanley R. Boyd is the duly appointed Director of the Underground Storage Tank Division (the "Division"). He has received written delegation from the Commissioner to administer and enforce particular aspects of the Act.

II.

Authur Chapman (the "Respondent") is the registered owner of two (2) underground storage tank ("UST") systems located at Pleasant Run Grocery, 1810 Mecklinburg Drive, Bolivar, Tennessee 38008. The Respondent may be served at 11612 Hampstead Drive, Fredericksburg, VA 22407.

JURISDICTION

III.

When the Commissioner expends money from the Petroleum Underground Storage Tank fund for investigation, identification, containment or cleanup pursuant to Tenn. Code Ann. § 68-215-115(a), she may issue an order to any responsible party to recover the amount expended or to assess that party's apportioned share of costs expended. The Commissioner may consider equitable factors when assessing a

responsible party's apportioned share. Tenn. Code Ann. § 68-215-115(b). In no event shall the total monies recovered from the responsible party or parties exceed the total expenditure from the fund for such site, except that the Commissioner may assess civil penalties as provided in Tenn. Code Ann. § 68-215-121. Further, 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, pursuant to Tenn. Code Ann. § 68-215-114, she 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. Pursuant to Tenn. Code Ann. §§ 68-215-107 and 111, rules of the Department governing underground storage tanks have been promulgated and are effective as Tenn. Comp. R. & Regs. 0400-18-01 et seq. (the "Rules").

IV.

The Respondent is a person as defined at Tenn. Code Ann. § 68-215-103(11), a responsible party as defined at Tenn. Code Ann. § 68-215-117(A)(i) and (ii), and has violated the Act as hereinafter stated.

FACTS

V.

On or about April 25, 2005, the Division received a Notification for Underground Storage Tanks form signed by Authur W. Chapman listing the Respondent as the owner of the two (2) UST systems, located at 1810 Mecklinburg Drive, Bolivar, Tennessee 38008. The facility ID number is 8-350113.

VI.

On or about July 19, 2013, a certified process server delivered Director's Order UST12-0204 to the Respondent. The two (2) USTs did not have the required cathodic protection and were therefore substandard. The order required the Respondent to permanently close the substandard USTs. The order directed the Respondent to:

- Submit a Permanent Closure Application within ninety (90) days,
- Permanently close the two (2) UST systems,
- Submit a Permanent Closure Report, and
- Remit payment for outstanding annual tank fees.

The Respondent did not appeal the order within thirty (30) days of receipt and the order became final and not subject to review.

VII.

On or about December 9, 2016, the Division retained its contractor, Pangean CMD, to permanently close the two (2) UST systems.

VIII.

On or about January 23, 2017, the Division received a Permanent Closure Application for the two (2) USTs from Pangean CMD. The application was reviewed and approved by the Division on or about February 10, 2017.

IX.

On or about February 24, 2017, a certified process server delivered a Letter of Notice of Impending Tank Removal to the Respondent. The letter stated the two (2) UST systems would be permanently closed by removal during the week of March 27, 2017.

X.

From March 28 through March 31, 2017, the Division's contractor conducted the permanent closure of the two (2) UST systems. The two (2) UST systems were removed from the ground and the regulatory required soil and ground water samples were taken. 400 gallons of fluid was removed from the tank excavation area by a vacuum truck and taken to a state-approved facility for disposal.

XI.

On or about March 31, 2017, the Division received the analytical results of the soil samples collected from the excavation area and soil stockpile. The Division also received the analytical results for the ground water samples taken from the excavation area. The laboratory analysis confirmed petroleum contamination concentrations in the soil and water above the Division's Initial Screening Levels (ISLs) for residential properties with drinking water status. Due to the elevated contaminant concentrations in the water and soil, the Division required installation of monitoring wells onsite in the areas with the highest contaminant concentrations. The Division also required the stockpiled soil from the excavation area be disposed of using a special waste permit at a landfill.

XII.

On or about May 2, 2017, the Division's contractor installed two (2) ground water monitoring wells. One well was located in the area with the highest concentration of petroleum contamination in soil and the second monitoring well was located between the excavation area and the onsite water well. Laboratory analysis of the ground water samples collected from the monitoring wells indicated petroleum concentrations above drinking water ISLs.

XIII.

On or about May 16, 2017, approximately 107 tons of stockpiled soil was disposed of at the Hardeman County Landfill.

XIV.

On or about June 14, 2017, the Division received the Permanent Closure Report from Pangean CMD that included the analytical results of the soil and water and a water use survey. The report identified impacts to soil and ground water at the facility and identified private water wells in proximity of the facility.

XV.

On or about October 13, 2017, the Division received the final invoice from Pangean CMT for costs associated with the permanent closure of the two (2) UST systems at the facility. The Division reviewed the invoice and paid a total of THIRTY SIX THOUSAND THREE HUNDRED SIXTY FOUR DOLLARS AND SEVENTY TWO CENTS (\$36,364.72) for the required work.

VIOLATIONS

XVI.

By failing to operate a petroleum underground storage tank system in compliance with the Act, the Respondent has violated Tenn. Code Ann. § 68-215-104(1), 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 permanently close the interior-lined tank where cathodic protection was not installed by December 22, 2012, the Respondent has violated Rule 0400-18-01-.07(2), which states:

0400-18-01-.07 OUT OF SERVICE UST SYSTEMS AND CLOSURE.

(2) Substandard UST systems.

Unless directed to do otherwise by the division, owners, operators, and/or other responsible parties of an UST system which does not meet the requirements in paragraphs (3) and (4) of Rule 0400-18-01-.02 shall permanently close the substandard UST system in accordance with paragraphs (4) and (5) of this rule. Owners, operators, and/or other

responsible parties of a substandard UST system shall complete the permanent closure, including submittal of the Permanent Closure Report, within sixty (60) days of division approval of the Application for Permanent Closure of Underground Storage Tanks.

XVIII.

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.*

ORDER

XIX.

WHEREFORE, pursuant to the authority vested by Tenn. Code Ann. §§ 68-215-107, 68-215-109, 68-215-114, and 68-215-121;

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

1. Respondent shall complete the following activities:

- (a) On or before the thirty-first (31st) day after receipt of this order, the Respondent shall submit the Initial Response and Hazard Management Report (IRHMR) to the Division. The Respondent shall submit the original report to:

Jackson Environmental Field Office
Division of Underground Storage Tanks
1625 Hollywood Drive
Jackson, TN 38305

and a copy of the IRHMR to the Nashville Central Office:

Division of Underground Storage Tanks
312 Rosa L. Parks Avenue 12th FL
Nashville, TN 37243; and

- (b) The Respondent shall meet any additional requirements of Rule 0400-18-01-.06 based on the results of the IRHMR.
3. Failure to comply with any of the items listed above, the Commissioner, pursuant to Tenn. Code Ann. § 68-215-107(c), may provide for any necessary remedial actions at this site pursuant to Tenn. Code Ann. § 68-215-114(a). Additionally, upon commencement of the actions by the Commissioner, the Respondent may be liable to the state for a penalty in an amount equal to ONE HUNDRED FIFTY percent (150%) of the amount of any costs incurred by the fund pursuant to 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 thirty-first (31st) day after receipt of this order, the Respondent shall repay the Division THIRTY SIX THOUSAND THREE HUNDRED SIXTY-FOUR DOLLARS AND SEVENTY-TWO CENTS (\$36,364.72). This amount represents the costs incurred by the Division for permanently closing the two (2) UST systems.
 5. On or before the thirty-first (31) day after receipt of this order, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND SIX HUNDRED EIGHTY DOLLARS (\$7,680.00). This amount consists of:
 - (a) Two (2) violations assessed at THREE THOUSAND TWO HUNDRED DOLLARS (3,200.00) for failure to permanently close lined tanks where CP was not added by December 22, 2012, on two (2) tank systems for a total of SIX THOUSAND FOUR HUNDRED DOLLARS (\$6,400.00);
 - (b) One (1) violation assessed at twenty percent (20%) per outstanding violation for a total of ONE THOUSAND TWO HUNDRED EIGHTY DOLLARS (\$1,280.00) for failure to cooperate with the Division.
 6. 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, 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 THIRTY (30) DAYS after that deadline.

NOTICE OF RIGHTS

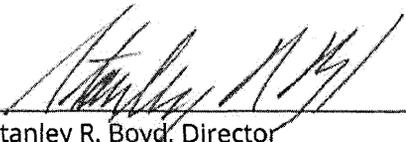
Tenn. Code Ann. § 68-215-119 allows the Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Commissioner within THIRTY (30) DAYS after the date the Respondent received this Order and Assessment or this Order and Assessment will become final (not subject to review).

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 pursuant to the provisions of Tenn. Code Ann. § 68-211-119(b), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Rule 1360-04-01 *et seq.* (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. This includes the authority to modify (decrease or increase) the penalty within the statutory limits of Tenn. Code Ann. § 68-215-121 (from \$1 to \$10,000 per day per violation). 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.

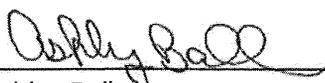
Any petition for review (appeal) must be directed to the Commissioner of the Tennessee Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue 2nd FL, Nashville, TN 37243-1548. 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 FL, Nashville, TN 37243. Technical questions and other correspondence involving compliance issues should be sent to Linda Main, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue 12th Floor Nashville, TN 37243. Attorneys should contact the undersigned counsel of record. **The case number, CRF 18-0001, 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 6th day of August, 2018.



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

Reviewed by:



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