

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
FEDEX GROUND PACKAGE SYSTEM, INC.)	
)	CASE NO. UST16-0030
RESPONDENT)	FACILITY: FEDEX GROUND

ORDER AND ASSESSMENT

NOW COMES Robert J. Martineau, Jr., Commissioner of the Tennessee Department of Environment and Conservation (the "Commissioner"), and states:

PARTIES

I.

Robert J. Martineau, Jr., is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (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** (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.

FedEx Ground Package System, Inc. (hereinafter, the "Respondent"), is the registered owner of five (5) underground storage tank systems located at FedEx Ground, 3301 Knight Road, Nashville, Tennessee 37207. Service of process may be made on FedEx Ground Package System, Inc., c/o C T Corporation System, 800 South Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710.

JURISDICTION

III.

When the Director finds upon investigation that any provision of the Tenn. Code Ann. §68-215-101 *et seq.*, 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, he 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. § 68-215-106(c), the Director may red tag the fill ports and/or dispensers and give notice on the department website of any owner or operator who violates any provisions of the Act or the regulations promulgated thereunder. Further, the Director has the Authority to assess civil penalties against any person who violates or fails to comply with the Act, pursuant to Tenn.Code Ann. § 68-215-121 of the Act. Pursuant to Tenn. Code Ann. §§ 68-215-107 and 113, rules of the Department governing underground storage tanks have been promulgated and are effective as the Official Compilation of the Rules and Regulations of the State of Tennessee, Chapter 0400-18-01.

IV.

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

FACTS

V.

On or about December 14, 2015, the Division received a Notification for Underground Storage Tanks form, signed by Anthony Spalvieri, listing the Respondent as the owner of the five (5) underground storage tank (UST) systems, located at FedEx Ground, 3301 Knight Road, Nashville, Tennessee 37207. The Division assigned the facility ID #5-191750.

VI.

On or about December 3, 2015, the Division received a telephone call from Harco Services, LLC representative Wayne Graham inquiring about UST permanent closure requirements. Mr. Graham stated that permanent closure of one (1) UST system was already planned for January 8, 2016. Mr. Graham was informed of the UST permanent closure guidelines and instructed to submit an electronic version of the Permanent Closure Application (PCA) to expedite review.

VII.

On or about December 31, 2015, the Division received an electronic version of the Permanent Closure Application for one (1) UST system. The application stated a proposed date for UST system closure on January 8, 2016 at which time the system would be removed.

VIII.

On or about January 6, 2016, Division personnel conducted review of the PCA and the following deficiency was noted - Failure to depict sample collection locations on the PCA site map -, which prevented approval of the application.

On this same date, Division personnel received a voice message from Dan Nedvidek a representative of Ensafe, an environmental contractor. He stated that the UST system closure was underway, that water was encountered in the tank pit upon UST removal, and that contractor First Response was onsite removing the tank pit water. These activities were taking place without the required Division approval of a Permanent Closure Application.

IX.

On or about January 7, 2016, Division personnel sent an electronic message to Wayne Graham stating that the Permanent Closure Application was not yet approved, that a corrected site map depicting sample collection locations was required to complete the application. and that the Division had been notified about tank closure activities occurring on January 6, 2016. Based on the contact from Ensafe on January 6, Division personnel went to the site on January 7, 2016 to attempt a closure inspection. The tank was already on the ground outside the tank pit and the tank pit filled with material.

X.

On or about January 12, 2016, Division personnel sent an Enforcement Action Notice – Unapproved Underground Storage Tank Closure letter to the Respondent. The letter cited the following violations:

- Violation #1: Failure to obtain Division approval prior to permanent closure of UST systems in accordance with Rule 0400-18-01-.07(4)(a)2.
- Violation #2: Failure to notify the Division at least one (1) working day in advance of any routine field activity in accordance with Rule 0400-18-01-.06(1)(b)1(i).

XI.

On or about January 15, 2016, the Division received a revised site map for the PCA depicting sample collection locations.

XII.

On or about March 3, 2016, Division personnel sent a Permanent Closure Application – Approved letter to the Respondent for the subject facility.

VIOLATIONS

XIII.

By operating a petroleum underground storage tank system without complying with the Act, the Respondent has 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;

XIV.

By failing to obtain Division approval prior to permanent closure of the UST system, the Respondent violated Rule 0400-18-01-.07(4)(a)2, which states:

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

(4) Permanent closure and changes-in-service.

(a) At least thirty (30) days before beginning either permanent closure of any portion of an underground storage tank system or a change-in-service under subparagraphs (b) and (c) of this paragraph, owners, operators, and/or other responsible parties shall apply for permanent closure, unless such action is in response to corrective action. Application for permanent closure or change in service shall meet the following requirements:

2. The tank owner, operator and/or other responsible party shall obtain division approval of the Application for Permanent Closure prior to permanently closing the UST system or any portion thereof or effecting a change in service of the UST system, unless tank compartment closure is conducted in accordance with paragraphs (3) and (5) of this rule.

ORDER

XV.

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 ASSESSMENTS and ORDERS to the Respondent:

1. On or before the 31st day following receipt of this Order, the Respondent shall pay a TOTAL CIVIL PENALTY in the amount of THREE THOUSAND TWO HUNDRED DOLLARS (\$3,200.00).

This amount consists of:

- (i) One (1) violation assessed at THREE THOUSAND TWO HUNDRED DOLLARS (\$3,200.00) for failing to obtain Division approval prior to permanent closure of UST system.

Furthermore, the 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. The Director may, for good cause shown by the Respondents, extend for a fixed time period, the compliance dates contained within this 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 Director will reply to the Respondent's request in writing. Should the Respondents fail to meet the requirement by the extended date, any associated CIVIL PENALTY shall become due in THIRTY (30) DAYS thereafter.

NOTICE OF RIGHTS

Tennessee Code Annotated ("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 of the date the Respondent received this Order and Assessment or this Order and Assessment become final (not subject to review).

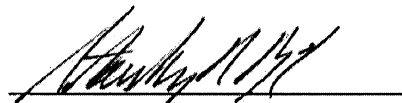
If an appeal is filed, an initial hearing of this will be conducted by an Administrative Law Judge ("ALJ") as a contested case hearing pursuant to the provisions of T.C.A. § 68-211-119(b), T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Rule 1360-04-01 *et seq.* (the Department 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 T.C.A. § 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, 2nd Floor William R. Snodgrass Tower., 312 Rosa Parks Avenue, Nashville, Tennessee 37243-1548. Payments of the civil penalty and/or damages shall be made payable to the

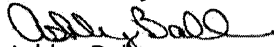
"Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 10th Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Rhonda Key, State of Tennessee, Division of Underground Storage Tanks, 12th Floor, William R. Snodgrass Tower, 312 Rosa Parks Avenue, Nashville, TN 37243. Attorneys should contact the undersigned counsel of record. **The case number, UST16-0030 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 12th day of October, 2016.



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

Reviewed by:



Ashley Ball

BPR #025250

Senior Counsel

Department of Environment & Conservation

312 Rosa L. Parks Avenue, 2nd Floor

Nashville, Tennessee 37243

615 532-0142

Ashley.ball@tn.gov