

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

**IN THE MATTER OF:**

**DEPARTMENT OF ENVIRONMENT  
AND CONSERVATION,  
*Petitioner,***

**v.**

**TGM LAND DEVELOPMENT, LLC  
  
*Respondent.***

**APD Case No. 04.44-213354J**

**TDEC Case No. UST20-0133**

**SETTLEMENT AGREEMENT AND ORDER**

On February 1, 2021, the Division of Underground Storage Tanks (“Division”) issued Order and Assessment number UST20-0133 (“Order”) against TGM Land Development, LLC (the “Respondent”). The Respondent filed a timely appeal on December 20, 2021. Pursuant to Tenn. Code Ann. §§ 4-5-105 and 68-215-119(b), the Division and the Respondent reached a settlement. To implement this settlement, (1) the Division Director agrees and by entering into this Settlement Agreement and Order does hereby dismiss the Order and (2) the Respondent agrees and by entering into this Settlement Agreement and Order does hereby waive their right to a contested case hearing before the Underground Storage Tanks and Solid Waste Disposal Control Board and withdraws their 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 Tennessee Department of Environment and Conservation (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 Division Director. He has received written delegation from the Commissioner to administer and enforce aspects of the Act.

**II.**

The Respondent is a limited liability company created in the State of Oklahoma and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of three underground storage tank (“UST”) systems located at 17100 Highway 641 South, Bath Springs, TN 38311-1500.

**JURISDICTION**

**III.**

The Commissioner may issue an order for correction to the responsible party 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 order shall be complied with within the time limit specified in the order. Tenn. Code Ann. § 68-215-114. 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. The Commissioner of the Department delegated such authority to Stanley R. Boyd, Director of the Division.

**IV.**

The Respondent is a “person” as defined at Tenn. Code Ann. section 68-215-103(11).

## **FACTS**

### **V.**

On April 18, 2017, the Division received a Notification for Underground Storage Tanks form listing the Respondent as the owner of the three UST systems located at 17100 Highway 641 S., Bath Springs, TN 38311-1500. The facility ID number is 8-200092.

### **VI.**

On or about November 11, 2019, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

- Violation 1: Failure to provide a method of piping release detection that is installed, calibrated, operated and maintained in accordance with manufacturer's criteria in accordance with Rule 0400-18-01-.04(1)(a)2(i). Specifically, at the time of inspection, the diesel tank 1C product piping was at a lower elevation than the top of the product tank, which requires installation of an anti-siphon, normally closed, solenoid in the piping.
- Violation 2: Failure to be monitor piping and tanks for a release at least every thirty days in accordance with Rules 0400-18-01-.04(2)(a)2 and 0400-18-01-.04(2)(b)1(ii). Specifically, at the time of inspection, twelve months of alarm history reports were not provided for review.

The Respondent addressed Violation 2 by printing an alarm history during the inspection.

### **VII.**

The Division sent the Respondent a Results of Compliance Inspection – Action Required letter on November 25, 2019; January 27, 2020; and March 5, 2020. The letter cited Violation 1 discovered during the compliance and required the Respondent to submit documentation showing the violation had been corrected.

### **VIII.**

On September 4, 2020, the Division sent a Notice of Violation letter to the Respondent. The letter set an October 4, 2020 deadline to submit documentation that the solenoid had been installed or

documentation of the elevation. When the Respondent failed to provide a response by the October 4, 2020 deadline the following violation was added

Violation 3: 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).

**IX.**

On February 1, 2021, the Division issued the Order directing the Respondent to correct Violation 1 and submit the compliance documentation to the Division. The Order assessed civil penalties totaling \$21,120. The Respondent received the Order via private process server on February 11, 2021. On March 11, 2021, the Respondent appealed the Order.

**X.**

On March 30, 2022, the Respondent's contractor permanently deactivated the diesel pump to Tank 1C. This action addressed Violation 1 and returned the facility to compliance.

**ORDER**

**XI.**

To resolve this matter and pursuant to the authority vested by the Act and the Commissioner's delegation, the Director and the Respondent agree to the following:

1. The Respondent will pay \$5,280 of the \$21,120 total civil penalties assessed in the Order no later than 30 days after the Settlement Agreement and Order is signed by Stanley R. Boyd. The Respondent will write the case number, UST20-0133, in the check memo line and make the check payable to the "Treasurer, State of Tennessee". The check will be sent to Ashley Ball, TDEC-OGC, 312 Rosa L. Parks Avenue, 2<sup>nd</sup> Floor, Nashville, Tennessee 37243.
2. The Respondent will pay the remaining assessed civil penalties of \$15,840, if and only if, the following occurs

- a. The Respondent fails to comply with paragraph 1. above; or
  - b. The Division determines there is an automatic enforcement referral violation at the facility within 12 months of the effective date of this Settlement Agreement and Order.
- A list of the automatic enforcement referral violations is included as Attachment A.

**XII.**

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

**DEPARTMENT'S RESERVATION OF RIGHTS**

**XIII.**

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).

**RESPONDENT'S RESERVATION OF RIGHTS**

The Respondent does not admit or deny the factual allegations, or the alleged violations of law contained in this Settlement Agreement and Order. The Respondent reserves their rights to contest the factual allegations and alleged violations contained in this Settlement Agreement and Order in any

proceeding other than a proceeding brought by the Department to enforce the terms of this Settlement Agreement and Order.

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



Date: Apr 25, 2022

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



Grant Jr Irwin (May 4, 2022 17:38 EDT)

Date: May 4, 2022

Grant Irwin, President  
TMG Land Development Inc., Respondent

Reviewed by:

Reviewed by:



Ashley Ball (Apr 25, 2022 16:48 CDT)

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