

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
KAG SPECIALTY PRODUCTS GROUP, LLC)	
)	CASE NO. UST22-0125
RESPONDENT)	FACILITY: TRANSPORT SERVICE CO

ORDER AND ASSESSMENT

David W. Salyers, P.E., Commissioner of the Department of Environment and Conservation, states:

PARTIES

I.

David W. Salyers, P.E., is the duly appointed Commissioner of the Department of Environment and Conservation ("Department") and is charged with administering and enforcing the Tennessee Petroleum Underground Storage Tank Act ("Act"), Tenn. Code Ann. §§ 68-215-101 to -129. Stanley R. Boyd is the duly appointed Director ("Director") of the Division of Underground Storage Tanks ("Division") and has received written delegation from the Commissioner to administer and enforce the Act.

II.

KAG Specialty Products Group, LLC ("Respondent") is a limited liability company created in Delaware and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of one underground storage tank (UST) system located at 1725 Harbor Avenue, Memphis, Tennessee 38113. Service of process may be made on the Respondent's Registered Agent, C T Corporation System, 300 Montvue Road, Knoxville, Tennessee, 37919-5546

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 affix a notice of petroleum delivery prohibition ("red tag") to 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. § 68-215-103(11) and has violated the Act as hereinafter stated.

FACTS

V.

On June 9, 2016, the Division received a Notification for Underground Storage Tanks form, listing the Respondent (which went as "Transport Service, LLC" until January 3, 2019) as the owner of the one UST system located at 1725 Harbor Avenue, Memphis, Tennessee 38113. The facility ID number is 9-792406.

VI.

On February 18, 2022, Division personnel contacted the Respondent by email and scheduled a compliance inspection to be conducted on March 8, 2022.

VII.

On March 8, 2022, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

- Violation #1: Failure of facility having one or more petroleum UST systems to have one or more persons designated as Class A, Class B, and Class C Operators in accordance with Rule 0400-18-01-.16(2)(a). Specifically, at the time of inspection, no owner/operator was designated as an A/B operator.
- Violation #2: Failure to ensure that electronic and mechanical components are tested annually in accordance with Rule 0400-18-01-.04(1)(a)3. Specifically, at the time of inspection, no primary console operability test was provided.
- Violation #3: Failure to perform periodic walkthrough inspections in accordance with Rule 0400-18-01-.02(8)(a)1. Specifically, at the time of inspection, neither the monthly spill bucket logs nor the annual walkthrough was provided for review.

- Violation #4: Failure to inspect overfill prevention equipment at least once every three years in accordance with Rule 0400-18-01-.02(3)(c)2. Specifically, at the time of inspection, no overfill prevention equipment inspection was provided for review.
- Violation #5: Failure to test spill prevention equipment at least once every three years in accordance with Rule 0400-18-01-.02(3)(c)1. Specifically, at the time of inspection, the spill bucket integrity test was not provided for review.
- Violation #6: Failure to monitor tanks at least monthly in accordance with Rule 0400-18-01-.04(2)(a). Specifically, at the time of inspection, the past 12 months of automatic tank gauge (ATG) results were not provided for review.
- Violation #7: Failure to conduct annual line tightness test or do monthly monitoring on pressurized underground piping in accordance with Rule 0400-18-01-.04(2)(b)1(ii). Specifically, at the time of inspection, the annual line tightness test was not provided for review.
- Violation #8: Failure to test line leak detectors annually in accordance with Rule 0400-18-01-.04(4)(a). Specifically, at the time of inspection, no annual line leak detector test was provided for review.
- Violation #9: Failure to remove dispenser cover and visually inspect for releases, seeps, drips at least quarterly in accordance with Rule 0400-18-01-.04(1)(e). Specifically, at the time of inspection, no quarterly dispenser inspections were provided for review.

VIII.

On March 11, 2022, Division personnel sent a Results of Compliance Inspection – Action Required letter to Mr. King. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by April 15, 2022, to document correction of the violations.

IX.

On May 12, 2022, Division personnel sent a Results of Compliance Inspection – No Response Received letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by June 13, 2022, to document correction of the violations.

X.

On July 11, 2022, Division personnel sent a Follow-up Letter and Enforcement Action Notice letter to the Respondent. The letter cited the violations discovered during the inspection and the Respondent's failure to return to compliance.

XI.

On August 11, 2022, Division personnel sent a Notice of Violation certified letter to the Respondent. The letter cited the violations discovered during the inspection and required the Respondent to submit documentation to the Division by September 12, 2022, to document correction of the violations. U.S. Postal Service tracking records delivery on August 18, 2022.

XII.

To date, no documentation has been received regarding any of the violations, and the following violation was added:

Violation 10: 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).

VIOLATIONS

XIII.

By failing to operate a petroleum underground storage tank system in compliance with the Act, the Respondent violated section 68-215-104(2) of the Act, which states:

It is unlawful to: [c]onstruct, 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 have one or more petroleum UST systems to have one or more persons designated as Class A, Class B, and Class C Operators., the Respondent violated Rule 0400-18-01-.16(2)(a), which states: 0400-18-01-.16 Certified Operator Program.

(2) Operator Training Requirements

(a) Persons to be classified as Class A, Class B, or Class C Operators must log on to the Division's web-based training database and indicate how operator training requirements are met for each applicable classification by indicating successful completion of at least one of the following [. . .]

XV.

By failing to ensure that electronic and mechanical components are tested annually for proper operation, the Respondent violated Rule 0400-18-01-.04(1)(a)3., which states: 0400-18-01-.04 RELEASE DETECTION.

- (1) General requirements for release detection.
 - (a) Owners and/or operators of UST systems shall provide a method, or combination of methods, of release detection that:
 3. Ensures that electronic and mechanical components are tested for proper operation in accordance with subparts 2.(i) through (iii) of this subparagraph. The test must be performed at least annually, and at a minimum, as applicable to the facility, cover the following components and criteria [...]

XVI.

By failing to perform periodic walkthrough inspections, the Respondent violated Rule 0400-18-01-.02(8)(a)1., which states:

0400-18-01.02 UST Systems: Installation and Operation.

- (8) Periodic operation and maintenance walkthrough inspections.
 - (a) To properly operate and maintain UST systems, no later than three years after the effective date of this rule, owners and/or operators must meet one of the following:
 1. Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified below [...]

XVII.

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.

XVIII.

By failing to test spill prevention equipment at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure or liquid, the Respondent violated Rule 0400-18-01-.02(3)(c)1., which states:

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

- (3) Spill and overflow prevention.
 - (c) Periodic testing of spill prevention equipment and periodic inspection of overflow prevention equipment.
 - 1. Monitoring. Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) must prevent releases to the environment by meeting one of the following [...]

XIX.

By failing to conduct release detection monitoring at least monthly, the Respondent violated Rule 0400-18-01-.04(2)(a), which states:

0400-18-01-.04 RELEASE DETECTION.

- (2) Requirements for petroleum UST systems.

Owners and/or operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

 - (a) Tanks.

Tanks shall be monitored at least monthly for releases using one of the methods listed in subparagraphs (3)(c) through (f) of this rule, except that tank which meet the volume, diameter, and test duration requirements as set forth in subpart (3)(a)1.(i) of this rule may use manual tank gauging (conducted in accordance with subparagraph (3)(a) of this rule).

XX.

By failing to conduct annual line tightness tests or do monthly monitoring on pressurized underground piping, the Respondent violated Rule 0400-18-01-.04(2)(b)1.(ii), which states:

0400-18-01-.04 Release Detection.

- (2) Requirements for petroleum UST systems.

Owners and/or operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

 - (b) Piping.

Underground piping that routinely contains petroleum shall be monitored for releases in a manner that meets one of the following requirements:

1. Pressurized piping.

Underground piping that conveys petroleum under pressure shall:

- (ii) Have an annual line tightness test conducted in accordance with subparagraph (4)(b) of this rule or have monthly monitoring conducted in accordance with subparagraph (4)(c) of this rule.

XXI.

By failing to test line leak detectors annually, the Respondent violated Rule 0400-18-01-.04(4)(a), which states:

0400-18-01-.04 Release Detection.

- (4) Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of paragraph (2) of this rule shall be conducted in accordance with the following:

- (a) Automatic line leak detectors.

Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of petroleum through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector shall be conducted in accordance with guidance provided by the Division.

XXII.

By failing to maintain a log of at least the last 12 months of visual inspections for seeps and drips after removing the dispenser cover, the Respondent violated Rule 0400-18-01-.04(1)(e), which states:

0400-18-01-.04 RELEASE DETECTION.

- (1) General requirements for release detection.

- (e) The dispenser cover shall be opened and a visual inspection for petroleum releases, including seeps and drips, shall be performed at least quarterly, that is, at least once every three months. A log of these inspections showing at a minimum the last 12 months shall be maintained by the owner and/or operator.

XXIII.

By failing to cooperate with the Division by failing to provide documents, testing or monitoring records to the Division, 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 Tenn. Code Ann. T.C.A. §§ 68-215-101 et seq.

ORDER AND ASSESSMENT

XXIV.

Pursuant to the authority vested by sections 68-215-107, -114, and -121 of the Act, the Respondent is issued the following Order:

1. If the Respondent fails to comply with this Order and/or file an appeal within the timeframes stated below, **the above-referenced facility will be placed on the Delivery Prohibition List and the fill ports and dispensers will be red-tagged until compliance is achieved.** Tenn. Code Ann. § 68-215-106(c).
2. The Respondent shall perform all actions necessary to correct the outstanding violations and to bring the facility into full compliance with regulatory requirements. The Respondent shall provide the Division with documentation of the corrective action performed; the documentation shall be sufficient to establish a return to full compliance. Within 31 days of receiving this Order, the Respondent shall:
 - i. Visit the following link and register to attend Underground Storage Tank Operator Training:
<https://www.tn.gov/content/tn/environment/program-areas/ust-underground-storage-tanks/operator-training/tank-school.html>.
 - ii. Conduct A/B operator training and designate Class A/B operators and submit documentation to this field office. <https://www.tn.gov/environment/program-areas/ust-undergroundstorage-tanks/ust/operatortraining.html>
 - iii. Conduct an ATG operability test and submit documentation to the Division for review.

- iv. Complete the periodic and annual walkthrough forms and submit the forms to this field office for review.
 - v. Conduct an overfill prevention equipment inspection and submit documentation to this field office for review.
 - vi. Conduct a spill bucket integrity test and submit documentation to this field office for review.
 - vii. Submit the next three months of release detection records to the Division for review.
 - viii. Conduct a line tightness test and submit documentation to this field office for review.
 - ix. Conduct a line leak detector test and submit documentation to this field office for review.
 - x. Implement a quarterly dispenser log and submit documentation to this field office for review.
3. Within **three months** of receiving this Order, the Respondent shall successfully attend Underground Storage Tank Training.
4. Within 31 days of receiving this Order, the Respondent shall pay a total civil penalty of \$25,200.00 to the Division. This amount consists of the following:
- i. One violation assessed at \$3,800.00 for failing to designate Class A and B operators in the online system Tank Helper.
 - ii. One violation assessed at \$2,000.00 for failing to ensure that electronic and mechanical components are tested annually.
 - iii. One violation assessed at \$3,200.00 for failing to perform periodic walkthrough inspections.
 - iv. One violation assessed at \$2,000.00 for failing to inspect overfill prevention equipment at least once every three years.
 - v. One violation assessed at \$2,000.00 for failing to test spill prevention equipment at least once every three years.
 - vi. One violation assessed at \$3,200.00 for failing to monitor tank at least monthly.
 - vii. One violation assessed at \$2,000.00 for failing to conduct annual line tightness test.
 - viii. One violation assessed at \$2,000.00 for failing to test line leak detectors annually.
 - ix. Eight violations assessed at \$100.00 per missing dispenser inspection for a total of \$800.00 for failing to remove dispenser cover and visually inspect for releases, seeps, drips at least quarterly.
 - x. One violation assessed at \$4,200.00 for failing to cooperate with the Division by failing to provide documents, testing or monitoring records to the Division.

5. 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 and/or recovery of costs.
6. With the exception of the deadline for filing the appeal of this Order, the Director may extend the compliance dates contained within this Order for a fixed time period for good cause shown by the Respondent. 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 30 days after that deadline. The request for an extension of time does not change the deadline to submit an appeal.

RESERVATION OF RIGHTS

In issuing this Order and Assessment, 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.

NOTICE OF RIGHTS

The Respondent may appeal this Order and Assessment. Tenn. Code Ann. § 68-215-119. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent received this Order and Assessment or this Order and Assessment will become final.

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. Tenn. Code Ann. § 68-215-119; Tenn. Code Ann. § 4-5-301 to -325 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (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. 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 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 Floor, Nashville, Tennessee 37243-1548. The petition may be mailed or delivered to this address, or it may be sent to TDEC.Appeals@tn.gov. 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 Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Mark Brinton, Nashville Environmental Field Office, 711 R. S. Gass Boulevard, Nashville, Tennessee 37216. Attorneys should contact the undersigned counsel of record. **The case number, UST22-0125, 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 13th day of December, 2022.



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

Reviewed by:



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