

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

IN THE MATTER OF:)	
MHC TRUCK LEASING, INC.)	DIVISION OF UNDERGROUND STORAGE TANKS
)	CASE NO. UST17-0016
RESPONDENT)	FACILITY: MHC TRUCK LEASING, INC.

SETTLEMENT AGREEMENT AND ORDER

On July 5, 2018, an Order and Assessment was issued to MHC Truck Leasing, Inc. ("Respondent"). The Respondent filed a timely appeal on July 20, 2018. Pursuant to Tennessee Code Annotated ("Tenn. Code Ann.") §§ 4-5-105 and 68-215-101 the Commissioner and the Respondent have reached a settlement. To implement this settlement, (1) the Commissioner has agreed and by entering into this Settlement Agreement and Order does hereby also dismiss the July 5, 2018 Order, and (2) the Respondent has agreed and by entering into this Settlement Agreement and Order does also hereby waive its right to a contested case hearing before the Board in this matter and withdraws its appeal of the Order. This Settlement Agreement and Order resolves and supersedes the July 5, 2018 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 (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"), Tennessee Code Annotated ("Tenn. Code Ann.") §§ 68-215-101 et seq. Stanley R. Boyd is the duly appointed Director (the "Director") of the Underground Storage Tank Division (the "Division"). He has received written delegation from the Commissioner to administer and enforce aspects of the Act.

II.

MHC Truck Leasing, Inc. (the "Respondent"), is a corporation created in the State of Missouri, and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of one (1) underground storage tank ("UST") system located at MHC Truck Leasing, Inc., 1721 Transport Avenue, Memphis, Tennessee 38116. Service of process may be made on the Respondent's Registered Agent, Capitol Corporate Services, Inc., at 992 Davidson Drive, Suite B, Nashville, Tennessee 37205-1051.

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, then pursuant to Tenn. Code Ann. § 68-215-114, 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. Pursuant to Tenn. Code Ann. § 68-215-106(c), 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. Further, Tenn. Code Ann. § 68-215-121 authorizes the Commissioner to assess civil penalties against any person who violates or fails to comply with the Act. Rules governing underground storage tanks have been promulgated pursuant to Tenn. Code Ann. § 68-215-107(f) 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), and has violated the Act as hereinafter stated.

FACTS

V.

On or about June 16, 2000, the Division received a Notification for Underground Storage Tanks form, signed by Charlie Weaver, listing the Lease Midwest, Inc. as the owner of one UST system, located at 1721 Transport Avenue, Memphis, Tennessee 38116. On or about October 25, 2004, the Division received an Amendment of Articles of Incorporation changing the name of the Respondent to MHC Truck Leasing, Inc. The facility ID number is 9-790324.

VI.

On or about April 18, 2016, Division personnel contacted Rob Shropshire, Branch Manager, MHC Truck Leasing, by phone and scheduled a compliance inspection to be conducted on April 26, 2016. On or about April 18, 2016, Division personnel also sent a letter confirming the inspection date.

VII.

On or about April 26, 2016, 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-.06(1)(a). Specifically, the Class A Operator had not completed the training modules nor accepted the designation and the Class B Operator had not accepted the designation.
- Violation #2: Failure to ensure that cathodic protection system is tested within six (6) months of installation and every three (3) years thereafter in accordance with Rule 0400-18-01-.02(4)(c)2(i). Specifically, at the time of the inspection, the last two Corrosion Protection Test results were not available for Division review.
- Violation #3: Failure to test line leak detectors annually in accordance with Rule 0400-18-01-.04(4)(a). Specifically, at the time of the inspection, Line Leak Detector test results were not available for Division review.
- Violation #4: 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(i). Specifically, at the time of the inspection, Line Tightness Test results were not available for Division review.
- Violation #5: Failure to use any overfill prevention system in accordance with Rule 0400-18-01-.02(3)(a)1(ii). Specifically, at the time of the inspection, the overfill prevention equipment could not be verified by documentation or visual inspection.
- Violation #6: Failure to monitor tanks at least monthly in accordance with Rule 0400-18-01-.04(2)(a). Specifically, at the time of the inspection, Automatic Tank Gauge

Release Detection records for the previous 12 months were not available for Division review.

Violation #7: Failure to maintain a log of monthly inspections of spill catchment basins for twelve (12) months in accordance with Rule 0400-18-01-.02(3)(b)4. Specifically, at the time of the inspection, the Monthly Spill Bucket Inspection Log was not available for Division review.

Violation #8: Failure to maintain a log of at least the last 12 months of visual inspections for deeps and drips after removing the dispenser cover in accordance with Rule 0400-18-01-.04(1)(f). Specifically, at the time of the inspection, the Quarterly Dispenser Inspection Log was not available for Division review.

VIII.

On or about May 24, 2016, Division personnel sent a Results of Compliance Inspection – Action Required 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 June 29, 2016, to document correction of the violations. U.S. Postal Service tracking records delivery on May 27, 2016.

IX.

On or about September 9, 2016, Division personnel sent a Results of Compliance Inspection – No Response Received 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 October 19, 2016, to document correction of the violations. U.S. Postal Service tracking records delivery on September 13, 2016.

X.

On or about September 20, 2016, the Division received compliance documentation via facsimile, from Rob Shropshire addressing the violations discovered at the time of inspection. The following documentation was received:

- Precision Line Tightness and Leak Detector test Report, dated September 20, 2016
- Quarterly Dispenser Inspection Log, implemented September 20, 2016
- Monthly Spill Bucket Inspection Log, implemented September 20, 2016

The documentation confirmed that Violations #3, #4, #7, and #8, discovered during the inspection, had been addressed.

XI.

On or about October 14, 2016, the Division received compliance documentation via facsimile, from Rob Shropshire addressing the violations discovered at the time of inspection. The following documentation was received:

- Precision Line Tightness and Leak Detector test Report, dated September 20, 2016
- Quarterly Dispenser Inspection Log, implemented September 20, 2016
- Monthly Spill Bucket Inspection Log, implemented September 20, 2016
- Galvanic Cathodic Protection Testing Survey, dated January 2, 2011

XII.

On or about January 6, 2017, Division personnel sent a Follow-up Letter and Enforcement Action Notice certified letter to the Respondent. The letter cited the violations discovered during the inspection and the Respondent's failure to return to compliance. U.S. Postal Service tracking records delivery on January 11, 2017.

XIII.

On or about March 13, 2017, 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 April 17, 2017, to document

correction of the outstanding violations. U.S. Postal Service tracking records delivery on March 17, 2017.

XIV.

On or about April 27, 2017, received compliance documentation via electronic mail from Michael Kono, Regional Safety Manager, Murphy-Hoffman Company, addressing the violations discovered at the time of inspection. The following documentation was received:

- Precision Line Tightness and Leak Detector Test Report, dated September 20, 2016
- Galvanic Cathodic Protection Testing Survey, dated January 3, 2011
- Work Order with Overfill Prevention Verification

The documentation confirmed that Violation #5, discovered during the inspection, had been addressed.

XV.

On or about June 6, 2017, Division personnel sent electronic mail to Michael Kono listing the violations that still needed to be addressed with a compliance deadline of July 10, 2017. The Division has not received a response to the electronic mail and the facility has not returned to compliance.

XVI.

The following violation was added after the Respondent failed to meet the deadline of July 10, 2017:

Violation #9: Failure to cooperate by failing to provide documents, testing or monitoring records to the Division prior to the issuance of the order in accordance with Rule 0400-18-01-.03(2).

VIOLATIONS

XVII.

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(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 have designated Class A and Class B Operators that have completed all training modules, the Respondent has violated Rule 0400-18-01-.06(1)(a), which states:

0400-18-01-.16 CERTIFIED OPERATOR PROGRAM.

(1) **Operator Designation Requirements.**

- (a) Effective August 8, 2012 every facility having one or more petroleum UST systems subject to the requirements of Chapter 0400-18-01 must have one or more persons who have been designated by the tank owner as Class A, Class B, and Class C Operator(s).

XIX.

By failing to ensure that cathodic protection system is tested within six (6) months of installation and every three (3) years thereafter, 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:

ii. 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:

1. Frequency. All cathodic protection systems shall be tested within six (6) months of installation and at least every three (3) years thereafter;

XX.

By failing to conduct annual line tightness test or do monthly monitoring on pressurized underground piping, the Respondent has violated Rule 0400-18-01-.04(2)(b)1(i), 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 monitor tanks at least monthly, the Respondent has 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)(d) through (i) of this rule, except that:

XXII.

By failing to provide documents, testing or monitoring records to the Division prior to the issuance of the order, 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 T.C.A. §68-215-101 et seq.

ORDER AND ASSESSMENT

XXIII.

WHEREFORE, pursuant to the authority vested by Tenn. Code Ann. §§ 68-215-107, 68-215-114, and 68-215-121, Stanley R. Boyd, acting as the authorized representative of the Commissioner, and the Respondent agree as follows:

1. Respondent shall pay a Total Civil Penalty in the amount of \$12,240. However, the Total Civil Penalty shall be paid as follows:

i. The Respondent shall pay an Upfront Civil Penalty in the amount of \$3,120 as detailed below. The remaining \$9,120 shall become a Contingent Civil

Penalty. Payment of the Upfront Civil Penalty shall be made on or before the 31st day after the effective date of this Settlement Agreement and Order.

ii. If the Respondent fails to timely make payment of the Upfront Civil Penalty as provided above, the total unpaid portion of the Total Civil Penalty shall be paid immediately to the Department.

iii. Additionally, the Respondent shall pay the Contingent Civil Penalty in the amount of \$9,120 if the Division determines that a significant operational compliance violation has occurred at the facility during a one-year period to commence on the date of receipt of this Order. In the event that the Division discovers any violation, including non-significant operational compliance violations, it reserves the right to assess additional civil penalties and to take any and all other enforcement actions that it deems necessary.

2. Respondent shall pay the assessed Civil Penalty as outlined above 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, 10th Floor, Nashville, Tennessee 37243. The case number, "UST17-0016", should be clearly shown on the check or money order to ensure that the payment is properly credited.

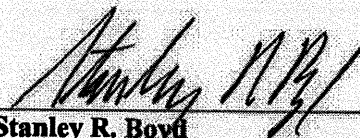
3. The foregoing Settlement Agreement and Order is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Settlement Agreement and Order will be one factor considered in any decision whether to take enforcement action against the Respondents in the future. Failure to comply with any of the requirements of this Settlement Agreement and Order could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.

4. Failure to comply with any of the requirements of this Settlement Agreement and Order could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.

5. The Respondent does not admit or deny the factual allegations or the alleged violations of law contained in this Settlement Agreement and Order.

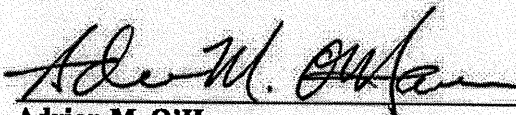
6. The Parties agree the foregoing Settlement Agreement and Order is a fair and reasonable resolution of this case.

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



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

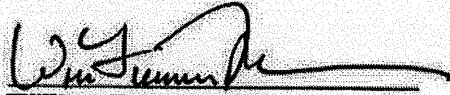
Date: 11-26-19



Adrian M. O'Hara
Director of Safety & Risk Management
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Date: 11/15/2019

Reviewed by:



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