

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF UNDERGROUND
)	STORAGE TANKS
NEW DEVELOPMENT, LLC)	
)	CASE NO. UST22-0030
RESPONDENT)	FACILITY: CIRCLE K STORE #4703674

ORDER AND ASSESSMENT

NOW COMES David W. Salyers, P.E., Commissioner of the Tennessee Department of Environment and Conservation ("Commissioner"), and states:

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 Director ("Director") of the Underground Storage Tank Division ("Division"). He has received written delegation from the Commissioner to administer and enforce aspects of the Act.

II.

New Development, LLC ("Respondent") is a limited liability company created in the State of Tennessee and is properly registered to conduct business in Tennessee. The Respondent is the registered owner of three underground storage tank ("UST") systems located at 4101 Yale Road, Memphis, Tennessee 38128. Service of process may be made on the Respondent's Registered Agent, Rooziman Shah, at 3264 West Sarazens Circle, Memphis, Tennessee 38125.

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 red tag 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. section 68-215-103(11) and has violated the Act as hereinafter stated.

FACTS

V.

On or about November 30, 2018, the Division received a Buyer's Notification for Underground Storage Tanks form, listing the Respondent as the owner of the three UST systems located at 4101 Yale Road, Memphis, Tennessee 38128. The facility ID number is 9-792423.

VI.

On or about August 10, 2021, Division personnel contacted the Respondent's compliance vendor, Tim Wilson with Compliance Associates, LLC, by email and scheduled a compliance inspection to be conducted on August 19, 2021. Division personnel also sent a letter to the Respondent confirming the inspection date.

VII.

On or about August 19, 2021, Division personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

- Violation #1: Failure to monitor tanks at least monthly in accordance with Rule 0400-18-01-.04(2)(a). Specifically, at the time of inspection, monthly release detection records for December 2020, January and February 2021 for Tank 1A (10,000-gallon regular) were not provided for Division review.
- Violation #2: Failure to comply with requirements concerning design, construction, utilization, and or upgrade of corrosion protection for piping in accordance with Rule 0400-18-01-.02(4)(b). Specifically, at the time of inspection, the Submersible Turbine Pump (STP) sumps for all three tank systems were full of liquid in contact with the metal piping components, including flex connectors.

VIII.

On or about August 24, 2021, Division personnel sent a Results of Compliance Inspection – Action Required 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 30, 2021, to document correction of the violations.

IX.

On or about September 29, 2021, 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 October 29, 2021, to document correction of the violations.

X.

On or about November 22, 2021, 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 or about December 30, 2021, 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 January 30, 2022, to document correction of the violations. U.S. Postal Service tracking records the letter in transit on February 2, 2022.

XII.

The Respondent did not submit documentation evidencing correction of the violations. By failing to submit required documentation to the Division, the Respondent has also committed the following violation:

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).

XIII.

To date the violations have not been addressed and the facility is not in compliance.

VIOLATIONS

XIV.

By failing to operate a petroleum underground storage tank system in compliance with the Act, the Respondent has violated Tenn. Code Ann. section 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[.]

XV.

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)(c) through (f) of this rule, except that tanks 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).

XVI.

By failing to comply with requirements concerning design, construction, utilization, and or upgrade of corrosion protection for piping, the Respondent has violated Rule 0400-18-01-.02(4)(b), which states, in part:

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

(4) Corrosion protection.

(b) Piping construction.

Piping that routinely contains petroleum and is in contact with the ground or withstanding water or other liquids shall be properly designed and constructed and/or properly upgraded. However, the presence of condensate within a sump or containment area shall not constitute contact with standing water.

XVII.

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

ORDER AND ASSESSMENT

XVIII.

Pursuant to the authority vested by Tenn. Code Ann. sections 68-215-107, -114, and -121,

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

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.
 - i. On or before the thirty-first day after receipt of this Order, the Respondent shall submit documentation of the most recent monthly release detection record for Tank 1A.
 - ii. On or before the thirty-first day after receipt of this Order, the Respondent shall submit either documentation of the removal of the liquid in all three STP sumps (Disposal Manifest) and repair or replacement records to ensure future accumulation of liquid does not occur; or documentation of the installation and testing of corrosion protection to the metal piping components, including flex connectors.

3. On or before **three months** after receiving this Order, the Respondent shall successfully attend Underground Storage Tank Training.
4. On or before the thirty-first day after receipt of this Order, the Respondent shall pay a total civil penalty in the amount of \$12,240.00. This amount consists of the following:
 - i. Three violations assessed at \$200.00 per missing monthly test per tank system for a total of \$600.00 for failing to monitor tanks at least monthly.
 - ii. Three violations assessed at \$3,200.00 per piping system for a total of \$9,600.00 for failing to protect metal piping from corrosion.
 - iii. One violation assessed at 20% of the civil penalty for all outstanding violations for a total of \$2,040.00 for failing to provide documents, testing, or monitoring records to the Division.
5. 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.
6. **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.**
7. 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 30 days after that deadline. The request for an extension of time does not change the deadline to submit an appeal. See Notice of Rights.

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(s).

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. § 69-215-119; 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 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 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 Ethan Ralph, Division of Underground Storage Tanks, Nashville Environmental Field Office, 711 R.S. Gass Boulevard, Nashville, Tennessee, 37216 or to tonya.spence.casson@tn.gov. Attorneys should contact the undersigned counsel of record. **The case number, UST22-0030, 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 20th day of July, 2022.



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

Reviewed by:



[Ashley Ball \(Jul 21, 2022 13:37 CDT\)](#)

Ashley J. Ball
BPR# 025250
Assistant General Counsel
Department of Environment and Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0142
Ashley.Ball@tn.gov